In The
Supreme Court of the United States

October Term, 1979

No. 79- **79-1740**

GERMAIN H. BALL, et al.,

Appellants

vs.

ROLAND W. JAMES, et al.,

Appellees

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

JURISDICTIONAL STATEMENT

JON L. KYL
NEIL VINCENT WAKE
JENNINGS, STROUSS & SALMON
111 West Monroe
Phoenix, Arizona 85003
Tel. (602) 262-5881

REX E. LEE
2840 Iroquois Dr.
Provo, Utah 84601

Attorneys for Appellants

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES CITED	iii
OPINION BELOW	1
JURISDICTION	2
QUESTIONS PRESENTED	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	2
STATEMENT OF THE CASE	3
Nature of the Case	3
Historical Background	5
District Organization and Voting	8
Water and Power Functions	9
Water Functions	10
Power Functions	12
The Proceedings Below	14
THE QUESTIONS PRESENTED ARE SUBSTANTIAL	16
I. With its Concentration on Size Rather Than Function the Court of Appeals' New Test for Determining the Constitutionality of Special District Election Procedures Displaces this Court's Holding in *Salyer*. .	16
II. The Salt River Project District Is In Substance A Private Business Entity; Therefore, The Equal Protection Clause Does Not Require Customer Control Of It Any More Than For Other Private Businesses	21
CONCLUSION	25

TABLE OF CONTENTS (Continued)

		Page
APPENDIX		
Appendix A:	Opinion (filed October 12, 1979, in the Court of Appeals)	A-1
Appendix B:	Judgment (filed October 12, 1979, in the Court of Appeals)	B-1
Appendix C:	Stipulated Statement of Facts (filed February 24, 1976, in the District Court)	C-1
Appendix D:	Judgment (filed March 17, 1976, in the District Court)	D-1
Appendix E:	Order denying rehearing (filed February 6, 1980, in the Court of Appeals)	E-1
Appendix F:	Notice of Appeal to the Supreme Court of the United States (filed February 13, 1980, in the Court of Appeals)	F-1

TABLE OF AUTHORITIES CITED

CASES	*Page*
Alexander v. Fioto, 430 U.S. 634 (1977)	21
Associated Enterprises, Inc. v. Toltec Watershed Improvement District, 410 U.S. 743 (1973)	16,17,18
Avery v. Midland County, 390 U.S. 474 (1968)	16
County Board of Arlington County v. Richards, 434 U.S. 5 (1977)	21
Dandridge v. Williams, 397 U.S. 471 (1970)	21
Hadley v. Junior College District, 397 U.S. 50 (1970)	16
Hortonville Joint School District No. 1 v. Hortonville Education Association, 426 U.S. 482 (1976)	22
Idaho Department of Employment v. Smith, 434 U.S. 100 (1977)	21
Jefferson v. Hackney, 406 U.S. 535 (1972)	21
Kramer v. Union Free School District, 395 U.S. 621 (1969)	17
Local 266, I.B.E.W. v. Salt River Project Agricultural Improvement & Power District, 78 Ariz. 30, 275 P.2d 393 (1954)	12,22
Mathews v. de Castro, 429 U.S. 181 (1976)	21
Neidner v. Salt River Project Agricultural Improvement & Power District, 121 Ariz. 331, 590 P.2d 447 (1979)	14,22
Ohio Bureau of Employment Services v. Hodory, 431 U.S. 471 (1977)	21
Reichenberger v. Salt River Project Agricultural Improvement & Power District, 50 Ariz. 144, 70 P.2d 452 (1937)	21
Reynolds v. Sims, 377 U.S. 533 (1964)	4,16,17
Salyer Land Co. v. Tulare Lake Basin Water Storage District, 410 U.S. 719 (1973)	2, *passim*
Uhlmann v. Wren, 97 Ariz. 366, 401 P.2d 113 (1965)	10

TABLE OF AUTHORITIES CITED (Continued)

STATUTES *Page*

Arizona Revised Statutes Annotated

§ 12-1111 (1956) 14
§ 45-909 (1979 Supp.) 2
§ 45-961B (1979 Supp.) 9
§ 45-961A2 (1979 Supp.) 9
§ 45-963 (1979 Supp.) 9
§ 45-983 (1979 Supp.) 2,3,9
§ 45-1011, *et. seq.* (1956) 13
§ 45-2201, *et. seq.* (1979 Supp.) 24

Arizona Laws 1976

Chapter 83, § 2 9
Chapter 83, § 3 9
Chapter 83, § 6 9

United States Code

28 U.S.C. 1254(2) 2,16,25
43 U.S.C. 371, *et. seq.* 5
43 U.S.C. 485(c) 9
43 U.S.C. 501 9
43 U.S.C. 522 9
43 U.S.C. 598 9
43 U.S.C. 825t 9

Reclamation Act of 1902 (43 U.S.C. 371 *et. seq.)* .. 5,6

OTHER AUTHORITIES

Rules of the Supreme Court

Rule 16(1)(b) 16
Rule 16(1)(c) 16

Wright, Miller and Cooper, *Federal Practice and Procedure* (1978) 16

In The

Supreme Court of the United States

October Term, 1979

No. 79-

GERMAIN H. BALL, ALEX M. CONOVALOFF, BILL ROUSSEAU, LEO C. SMITH, JOHN M. WILLIAMS, THOMAS P. HURLEY, JR., WILLIAM P. SCHRADER, JOHN S. HOOPES, W. LARKIN FITCH, and THOMAS J. FINLEY, in their capacity as members of the Board of Directors, Salt River Project Agricultural Improvement and Power District, and KARL F ABEL, in his capacity as President of the Salt River Project Agricultural Improvement and Power District,

Appellants,

vs.

ROLAND W. JAMES, JAMES R. FITZSIMMONS, DWIGHT M. BRAHS, FRANK SACCO, and JOHN H. MAFFEO, on behalf of themselves and their respective classes,

Appellees.

JURISDICTIONAL STATEMENT

Appellants Germain H. Ball, et al., members of the Board of Directors of the Salt River Project Agricultural Improvement and Power District, appeal from the judgment and opinion of the United States Court of Appeals for the Ninth Circuit of October 12, 1979, declaring unconstitutional the acreage voting system of the District.

OPINION BELOW

The opinion of the Court of Appeals (App. A) is reported at 613 F.2d 180.

JURISDICTION

The judgment and opinion of the Court of Appeals were entered on October 12, 1979. The motion for rehearing, timely filed, was denied on February 6, 1980. A notice of appeal to this Court was filed on February 13, 1980 (App. F). Jurisdiction is conferred on this Court by 28 U.S.C. 1254(2).

QUESTIONS PRESENTED

1. Whether, under this Court's decision in *Salyer Land Co. v. Tulare Lake Basin Water Storage District*, 410 U.S. 719 (1973), the test for determining the constitutionality of special district elections continues to turn on the nature of the district's functions and the disproportionate effect of its activities on landowners as a group, or whether the test now depends on subjective judicial assessment of the size of the district and the number of its customers.

2. Whether the Constitution entitles electric customers to proprietary and voting control of a water reclamation district that sells electricity to support reclamation but whose powers, functions, and relationships between entrepreneurial risk and voting control differ in no material way from those of a privately owned electric utility.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Arizona Revised Statutes §§ 45-909 and 45-983 provide as follows:

§ 45-909. Qualifications of electors

No person shall be entitled to vote at any election held under the provisions of this chapter unless he possesses all the qualifications required of electors for state officers under the general election laws, and is the owner of record of real property located within the boundaries of the district as of sixty days preceding a district election, and on which he has been assessed for county taxes as shown by the county tax roll next preceding the date of the election.

§ 45-983. Acreage system of voting

A. The petition for organization of the district may provide that each owner of land shall have one vote, or may provide for voting on an acreage basis.

B. Except as provided in § 45-965, subsection D, if the district is or has been organized under a provision for voting on an acreage basis, each landowner possessing the qualifications of an elector shall be entitled to cast one vote at all elections after the organization election on each office to be filled, or each question submitted, for each acre of land within the district owned by him.

C. Except as provided in § 45-965, subsection D, from and after the effective date of this act each landowner possessing the qualifications of an elector who owns less than one acre of land within the district shall be entitled to a fractional vote on each office to be filled or each question submitted. The fractional vote shall be equal to the fraction of an acre owned by such elector.

D. If land is held in more than one name, each owner otherwise possessing the qualifications of an elector may vote the number of acres or fractions thereof represented by his legal interest or proportionate share of and in the lands.

E. The result of each election shall be determined by a majority of the acres voted as provided in subsections B, C and D of this section.

F. The district shall maintain a record of the persons owning real property within the boundaries of the district as such ownership appears on the records of the county recorder and the number of votes or fractions thereof the owner thereof shall be entitled to vote.

STATEMENT OF THE CASE

Nature of the Case.

This appeal involves the constitutionality of the acreage-based election procedures of one of the nation's oldest and largest federal reclamation projects. The District Court held

these procedures constitutional, and the Court of Appeals in a divided opinion held them unconstitutional. Judged by any standard, this is the most important case involving the constitutionality of special district voting procedures since the landmark voting rights decision in *Reynolds v. Sims*, 377 U.S. 533 (1964).

The Salt River Project stores and delivers untreated water to the owners of the water. Those owners are the landholders of 236,000 acres located in Central Arizona, including much of what is now the Phoenix metropolitan area. Over the 77 years of its existence, the primary purpose of the Salt River Project has been the storage, conservation, and delivery of water. In addition, "following the longstanding reclamation principle, electric revenues . . . are used to support water and irrigation operations, thereby keeping water delivery charges at reasonable levels. At the same time, the [Project] maintains rates for the electric service it provides which are comparable to those of neighboring utilities."[1]

Since it is a federal reclamation project, title to many of the Salt River Project properties is vested in the United States. In addition, the Secretary of the Interior has comprehensive supervisory powers over it. Since 1917, however, the Project management has been the responsibility of either the Salt River Valley Water Users Association (Association) or, since 1937, the joint responsibility of the Association and the Salt River Project Agricultural Improvement and Power District (District). The Association is a private corporation organized under the laws of the Terri-

---

[1] Stipulated Statement of Facts, Exhibit K, p. 4. The Stipulated Statement of Facts (Facts) is reproduced as Appendix C to this Jurisdictional Statement. The balance of the Record consists of Exhibits A-Z to the Stipulated Statement of Facts.

tory of Arizona, and the District is an agricultural improvement district, a special district which is a political subdivision of the State of Arizona. It is the Board of Directors of the District whose election is at issue here.

Historical Background.

The constitutional supports for the District's landowner based voting system are grounded generally in federal reclamation law and history and more particularly in the history of irrigation and reclamation in the Salt River Valley.

Agricultural development of the Valley began in the 1860's. A fertile but arid land whose usefulness has always depended on an adequate water supply, its development reached a barrier by the turn of the century. The farmers of the Valley, who were attempting to irrigate approximately 150,000 acres of land by diverting water from the Salt River through canals, were unable to control the erratic flow of the River. A long drought in the 1890's had significantly reduced the River's flow. At other times recurring floods washed out brush diversion dams, interrupting delivery of water to the lands to which it had been appropriated. It was apparent that cooperative action to store the waters of the Salt River and to insure a dependable supply of water for agriculture was necessary to further development of the Valley.[2]

In 1895, some farmers in the Salt River Valley formed the "Farmers Protective Association", for the prime purpose of securing legislation favorable to their interests. Salt River Valley farmers were in fact instrumental in securing the passage of the Reclamation Act of 1902, 43 U.S.C. 371

---

[2] See Facts ¶ 5, App. C-4-5. The Court's opinion in *Salyer Land Co. v. Tulare Lake Basin Water Storage District*, 410 U.S. 719 (1973), authored by Mr. Justice Rehnquist, recounted in detail the "peculiar problems of adequate water supplies" in the Western part of the country which led to the creation of special purpose water districts. 410 U.S. at 721-23. The discussion is pertinent to this case as well.

et seq. (Facts ¶ 5, App. C-4-5). Under that Act, the United States advanced interest-free funds to purchase and construct integrated systems of reclamation works, to be repaid by the owners of the lands benefited.

The Salt River Project, authorized by the Secretary of the Interior on March 14, 1903, was the second reclamation project created under the 1902 Act.

The potential for generating and selling hydroelectric power in connection with reclamation projects led Congress in 1906 to authorize sale of power "wherever . . . an opportunity is afforded for the development of power under any project". 43 U.S.C. 522. Almost from its beginning, the Salt River Project has generated and sold electric power incident to and in support of its primary water activities. (Facts ¶¶ 12 and 17, App. C-7,8).

The Salt River Valley Water Users Association was formed in 1903, as the legal entity that could satisfy the requirement of the 1902 Act that Project water users repay to the United States the costs of constructing and augmenting reclamation projects. The Association's Articles of Incorporation were drafted in cooperation with officers of the Federal Reclamation Service. The Articles give the subscribed lands the right to delivery of water in proportion to acreage. They further authorize acreage-proportionate stock assessments to meet the Association's income needs. Those stock assessments become a lien on the subscribed lands until paid. The Articles also provide for ownership and corporate voting rights in proportion to acreage subscribed into Association membership. (Facts ¶ 8, App. C-5, and Exhibit A to Facts).

In 1917, the Association and the United States entered into a contract obligating the Association to operate and maintain the Project as agent for the Government. (Exhibit C to Facts). The agreement requires the Association to maintain all works in proper operating condition and to deliver water to those entitled to it. (Exhibit C, ¶ 3 to Facts). It may return the Project to the United States for any rea-

son on March 1 of any year upon one year's notice. The United States may resume operation of the Project should the Association fail to carry out the law or the terms of the contract. (*Id.* ¶ 19).

The Association operated the Project directly from 1917 to 1937. In the 1920's and early 1930's, the Association heavily encumbered shareholders' lands to construct major dams and other works in the Project. (Facts ¶¶ 13, 14, App. C-7). During the Depression, the Association faced the need to reduce its borrowing costs. Creation of a special district which could issue bonds, the interest on which would be free from income taxation, seemed to provide the solution. Arizona's Agricultural Improvement District Act of 1928 permitted the creation of special districts known as agricultural improvement districts within federal reclamation projects for the purpose of developing and delivering water to the lands of the district. Since an agricultural improvement district is a political subdivision of the State of Arizona, the interest on its bonds is exempt from federal income tax. Notwithstanding the tax and consequent bond-marketing advantages, many of the Association's shareholders objected to a proposal to form an agricultural improvement district as the vehicle for raising needed capital funds. One of the reasons was that under the 1928 Act voting for a district's Board of Directors would be per capita among landowners, rather than by acreage as in the Association. (Facts ¶ 21, App. C-9-10). This would have meant that the landowners would bear the risk of bringing the District into existence without voting control proportionate to their risk. Representatives of the Association, therefore, requested the Arizona Legislature to amend the Agricultural Improvement District Act to conform the voting system of the Act to that of the Association. The Legislature enacted the necessary amendments in 1936, and the District was created in 1937, with boundaries essentially identical to the lands which had been subscribed into Association membership. Without acreage voting the Association would not have transferred title to its property

and control of the Project to the District. (Facts ¶ 33, App. C-14). Therefore, absent acreage voting, there would have been no District.

Under an agreement entered into in 1937 and approved by the United States, the Association transferred to the District, subject to the paramount interest of the United States, its property rights and duties, and authorized the District to perform the Association's contract obligations. Facts ¶¶ 24 and 32, App. 11,14). The Association in turn agreed to continue to operate and maintain the Salt River Project on behalf of the District. (Facts ¶ 24, App. C-11). As amended in 1944 and 1949, the contract now provides that the District itself directly operate the power and water storage function, and the Association operates the water delivery system as agent for the District. The net result is that since 1949 the District has operated the power activities and, through its agent the Association, the water activities.[3]

All of these activities of both the Association and the District are carried out against the background of the stipulated fact that the primary purpose of the Salt River Project is the development, storage and distribution of water for the irrigation of arid and semi-arid lands. (Facts ¶ 16, App. C-7-8). The development and sale of electrical power was undertaken not for the primary purpose of providing electricity to the public, but rather to provide financial support to the Project's primary irrigation functions. (Facts ¶ 17, App. C-8).

District Organization and Voting.

Originally, the method of electing the District's governing body — its Board of Directors — was the same as that used by the Association: one vote per acre. There have been two subsequent changes. In 1969, the Arizona Legislature amended the Agricultural Improvement District Act to permit the owners of less than one acre to cast a fractional

---

[3] The historical explanation for this arrangement is set forth in the Facts ¶ 25, App. C-11-12.

vote, proportionate to their acreage. The practical effect of this change was to enfranchise medium and small landowners. The second change occurred in 1976, after entry of the District Court's judgment holding the election statutes constitutional. Prior to the 1976 amendment, each of the ten directors was elected from a designated geographic electoral division. Each of the electoral divisions has as nearly equal number of acres as practicable. A.R.S. §45-961A2 (1956). The Legislature in 1976 enlarged the Board to 14 and provided that the four additional members were to be elected at large, with each landowner in the district having one vote.[4] In addition to its 14 Board members, the District also has a President and Vice President who are elected at large on an acreage basis. (Facts ¶ 26, App. C-12).

The District and the Association have identical constituencies, identical purposes, identical management, and essentially identical boundaries. (Facts ¶ 31, App. C-13). The Arizona Supreme Court has stated that the relationship between the two is one of "alter egos in substance, though not in law." (Facts ¶ 23, App. C-10-11).

Water and Power Functions.

Applying power revenues to reduce water costs is a long-standing reclamation principle. (See 43 U.S.C. 485(c), 522, 598, 501, and 825t. See also Exhibit K to Facts, p. 4.) The Salt River Project is no exception. Over the last ten years, an average of $10 million dollars per year from the District's power revenues has been applied to reduce water costs.

There is no question, however — indeed the parties have stipulated to the fact — that "the development and sale of electrical power ... was undertaken not for the primary purpose of providing electricity to the public but to support the primary irrigation functions by supplying power for re-

---

[4] Ariz. Rev. Stat. Ann. §45-961 B (1979 Supp.), added by Ariz. Laws 1976, Ch. 83, §2; Ariz. Rev. Stat. Ann. §45-963 (1979 Supp.), as amended, Ariz. Laws 1976, Ch. 83, §3; and Ariz. Rev. Stat. Ann. §45-983 (1979 Supp.), as amended, Ariz. Laws 1976, Ch. 83, §6.

clamation uses and by producing revenues which could be applied to increase the amount and reduce the cost of water to Association subscribed lands." (Facts ¶ 17, App. C-8).[5]

Water Functions.

The District and the Association service the water rights of more than 236,000 acres of assessed land through a system of six reservoirs with 2,072,050 acre-feet storage capacity, 131 miles of canals, 875 miles of laterals, and 263 miles of drainage or waste ditches. (Facts ¶ 44, App. C-19).

Though large in size, the Project's water functions are narrow in scope. They are not analogous to the municipal water functions of a city. The District and the Association own no water. They do not buy or sell water. They do not treat water. The Project only stores water behind its dams, minimizes water loss (through conservation practices), and then delivers water through the Project canals to those landowners who own it.[6] Therefore, the District and Association are not in the "water business" in the same sense that a city or municipal water company might be in the water business. Their stewardship is over a federal rec-

---

[5] The Arizona Supreme Court observed in *Uhlmann v. Wren*, 97 Ariz. 366, 392, 401 P.2d 113, 124 (1965), that the District's power activities could only be "an incidental phase of reclamation, not a primary or independent end in itself," because the only reason for sale of power is "the use of power revenue to support its primary irrigation and reclamation functions."

[6] The amount of water to which any landowner is entitled consists of two basic components, normal flow and stored and developed waters. Under Arizona law, all surface water rights are appurtenant to the land. Rights to the normal flow of the river are determined according to the time priority by which the river's waters were beneficially applied to the land. (See Facts ¶ 39, App. C-16, and the Kent Decree referred to therein). Rights to stored and developed waters (above the normal flow of the river) are divided equally on an acreage basis among all Association-subscribed land. (Facts ¶¶ 39 and 40, App. C-16-17). Thus, normal flow water rights are approximately proportionate to acreage, and stored and developed water rights are exactly proportionate to acreage.

lamation project. The Project merely stores, conserves, and delivers water that belongs to other people.

Approximately 75% of the water delivered by the District is used by its owners for agricultural and other irrigation purposes. Included in that 75% is about 15% used for "nonagricultural but predominantly irrigation uses, including parks, playgrounds, schools, and subdivision irrigation." (Facts ¶ 74, App. C-31). The other 25% is delivered to municipalities. The water delivered to municipalities represents either water appurtenant to land owned by the cities or water appurtenant to land owned by individuals who have chosen not to take delivery directly from the Project and have allowed the cities to take delivery as their agents. The agency contract between the Association and the city involved (there are 8 such cities; see Facts ¶¶ 41, 42, 75, and 82, App. C-17-18, 31, 33) provides that the city pays on behalf of those landowners the same assessments and water charges that those landowners would pay if they elected to take their water deliveries directly from the Project. Landowners who allow the cities to take delivery of their water may revoke their consent and resume taking their water themselves at any time.

The lower court's assertion that "nearly 40% of the water delivered by the District is used and paid for in a manner unrelated to agriculture or land ownership" (App. A-6) is something of a mystery. To the extent this assertion implies that the entitlement to water delivered to the cities or used for nonagricultural irrigation purposes is tied to anything other than land ownership, or that the amounts that the District charges for delivery of this water differs from its charges for agriculture water deliveries, the statement is false. (See Facts ¶ 41, App. C-17). The Court of Appeals' mistaken view on this factual issue was apparently important to its holding, because the opinion later states: "In view of the magnitude of the electric utility operations and the large percentage of the water services which are used

and paid for in a manner unrelated to land ownership, it would elevate form over substance to characterize the District as functioning solely for the benefit of landowners." (App. A-7).

The Court of Appeals' statement that "the District is not concerned solely with providing water for agriculture" (App. A-6) is correct but irrelevant. The District delivers water to persons and entities who own it and are entitled to receive it. The entitlement to the water and the amount of the entitlement depend exclusively on land ownership. (Facts ¶ 40, App. C-17). The use to which this water is placed once it is delivered to its owners is of no concern to the District and has no relevance to the District's obligation to store and deliver water to cities, either in their own right or as agents. The fact that the cities treat and sell water does not enlarge the limited nature of the District's function.

Power Functions.

The District is the second largest supplier of electricity in the State of Arizona, serving some 240,000 customers. (Facts ¶ 46, App. C-19). The largest and third largest, Arizona Public Service Co. and Tucson Electric Power Co., are both privately owned utilities. (Exhibit K to Facts, p. 30).

The District's power activities are, in effect, a business venture of the landowners to reduce the cost of water deliveries. (Facts ¶ 34, App. C-14). In a case involving the Salt River Project, the Arizona Supreme Court quoted from earlier decisions describing Arizona's irrigation districts and similar special districts as "purely business and economic and not political and governmental." *Local 266, I.B.E.W. v. Salt River Project Agricultural Improvement and Power District,* 78 Ariz. 30, 42-43, 275 P.2d 393, 402 (1954). Viewed as a percentage of gross power revenues, the amount of District power revenues provided for water assistance is approximately equivalent to the dividends paid to common stockholders in comparable electric utilities. (Facts ¶ 56, App. C-23). Its electric rates are also compara-

ble to those of the State's two principal private electric utilities. (Exhibit K to Facts, pp. 4-30;, Exhibit L to Facts, p. 1). In 1975, the year immediately preceding the Stipulation in this case, the agricultural water subsidy amounted to $8.89 per power customer. (Facts ¶ 84, App. C-33).

Just as the private investor puts his money at risk only because of anticipated profits, "the Association and its member landowners would not have transferred title to its property and control of the Salt River Project, including the power system, to a public body governed under a voting system without acreage voting and open to all qualified state electors solely on the basis of residence on District land." (Facts ¶ 33, App. C-14).

Labels aside, the only functional difference between the Salt River Project and private, investor-owned utilities in the State of Arizona is the District's power to impose an "acreage tax."[7] This acreage tax applies only to member lands and is simply the mirror-image of the stock assessment power to which those lands were already subject by virtue of Association membership. It has never been imposed, and probably never will be, because the Association has contracted to levy an acreage assessment under the Association's corporate stock assessment power at any time the District might otherwise require tax revenues to meet its current expenditures. The Association has levied acreage assessments for the benefit of the District under this contract provision. (Facts ¶ 18, App. C-8).

Moreover, if the acreage tax were ever imposed, it would be on a per acre rather than an *ad valorem* basis. Aside from that distinction that exists in law but has never been exercised in fact, the electric functions of the District are identical to those of private electric utilities in Arizona. The District cannot impose sales taxes or *ad valorem* property taxes. It cannot enact laws regulating the conduct of citizens residing within its boundaries. It has no authority to impose punishments for violations of any laws or regula-

---

[7] Ariz. Rev. Stat. Ann. §45-1011, *et. seq.* (1956).

tions. The District has the power of eminent domain, but so do other private utilities in the State of Arizona. Ariz. Rev. Stat. Ann. §12-1111 (1956). And, unlike all general purpose political subdivisions—indeed, unlike any other political subdivision in the State—the District is subject to *ad valorem* contributions in lieu of taxes on its property. Through the payment of these in lieu contributions, the District's electric operations are "in substance . . . taxed by the State like any other privately-owned utility." (Facts ¶¶ 57 and 58, App. C-23). The Arizona Supreme Court has repeatedly held, and has reiterated as recently as 1979 in *Neidner v. Salt River Project Agricultural Improvement & Power District*, 121 Ariz. 331, 590 P.2d 447, that the District is essentially a private business venture with no public powers of any significance.

In short, therefore, the Salt River Project was brought into existence over three quarters of a century ago because landowners in the Salt River Valley were willing to put their lands at risk in anticipation of enhancement of the value of those lands because of the Project's water storage and delivery activities. Almost from the beginning, the water operations have benefited from subsidies provided by the sale of electricity. This has been accomplished through electric rates competitive with those of private utilities, and the return to the landowners has been comparable to the return that would have been realized by private utility shareholders. The only difference is that the Arizona Legislature has adopted and periodically modified statutes allowing landowners to create special districts through which this conservation of agricultural water is subsidized. As with any other business enterprise, the beneficiaries are the people whose assets made the venture possible.

The Proceedings Below.

This lawsuit was brought by persons living within the District as a challenge to the constitutionality of the statutes by which the District's directors are elected. On cross motions for summary judgment on stipulated facts the Dis-

trict Court held the statutory scheme constitutional and dismissed the complaint. Nineteen months after oral argument, two members of the Court of Appeals reversed the District Court's judgment. The Court of Appeals majority opinion focuses on the undisputed facts that the District is large and that its activities affect the interests of many people. In the language of the majority, "the size and nature of the projects of the District and the effect of its operations on all of the residents of Arizona are more extensive than those of the district in *Salyer*." (App. A-5). Judge Hall, in dissent, observed that "what the court is holding is essentially that the plaintiffs, solely because they are users, are entitled to participate in all of the benefits as owners in the management and operation of the defendant District." (App. A-11).

THE QUESTIONS PRESENTED ARE SUBSTANTIAL[8]

I.

With its Concentration on Size Rather Than Function the Court of Appeals' New Test for Determining the Constitutionality of Special District Election Procedures Displaces this Court's Holding in Salyer.

Over the decade and a half since its decision in *Reynolds v. Sims*, 377 U.S. 533 (1964), this Court has consistently affirmed the principle that its ruling in that case dealing with apportionment—and in other cases dealing with voter qualifications—do not apply to all governmental units. By dictum in *Avery v. Midland County*, 390 U.S. 374 (1968), and *Hadley v. Junior College District*, 397 U.S. 50 (1970), and holdings in *Salyer Land Co. v. Tulare Lake Water Basin Storage District*, 410 U.S. 719 (1973) and *Associated*

---

[8] For reasons set forth in this section, the federal questions presented are clearly substantial. There is, therefore, no need for the Court to reach the issue whether 28 U.S.C. 1254(2) requires review regardless of "substantiality." As observed by Wright, Miller, and Cooper:

> The historic analogy to appeals from state courts that gave birth to §1254(2) extends beyond the finality issue to suggest that appeal jurisdiction might be defeated by lack of a substantial question. This possible limitation should be rejected. . . . State court appeals are most likely to be dismissed because a state court has rejected a frivolous attack on a state statute. Appeal lies from a Court of Appeals, on the other hand, only if it has held a state statute invalid. There may be some state statutes that are so transparently invalid that the Supreme Court need not bother with full presentation of arguments. Such cases are apt to be rare. The court can protect itself against them, if they should arise, by summary affirmance rather than by dismissal. Wright, Miller and Cooper, *Federal Practice and Procedure* §4037, p. 39 (1978).

The authors also observe in a footnote that their position is supported by Rule 16's differentiated treatment of motions to dismiss, depending on whether the appeal comes from a state or a federal court. Under Rule 16(1)(b), the motion to dismiss an appeal from a state court may be based on failure to present a substantial federal question. It is less clear that a motion to dismiss an appeal from a federal court of appeals under Rule 16(1) (c) can be sustained on the ground that there is no substantial federal question.

Enterprises, Inc. v. Toltec Watershed Improvement District, 410 U.S. 744 (1973), the Court has clarified that the controlling distinction turns on function rather than size, on what the entity does, rather than on how big it is or how many customers it has. Special districts, such as the water conservation operations in *Salyer*, *Associated Enterprise*, and this case, are outside the reach of *Reynolds* and *Kramer v. Union Free School District*, 395 U.S. 621 (1969). Entities exercising general governmental powers, such as cities, counties, and school districts, are not.

The Court of Appeals has drawn a different line, focusing on size rather than function.[9]

The governing constitutional test prescribed by *Salyer* is that the restrictive rules of *Reynolds* and *Kramer* do not apply where (1) the district has a limited purpose and (2) its activities have a disproportionate effect on land owners as a group.

With respect to the limited purpose requirement, the *Salyer* opinion recognized that special districts may engage in several different functions. In the *Salyer* case, one of these functions was flood control. The Court's holding, however, focused on the district's primary purpose: "Its primary purpose, indeed the reason for its existence, is to

---

[9] The following quotations from the Court of Appeals opinion are illustrative:

> The case at hand is quite different. Although at one time the Salt River District did bear some similarities to the district in *Salyer*, today the size and nature of the projects of the District and the effect of its operations on all of the residents of Arizona are far more extensive than those of the district in *Salyer*. App. A-5.
>
> The electric utility operations of the district are so substantial in scope and are so closely interwoven with the water delivery functions of the district that it is not a special limited purpose district whose operations have a disproportionate effect on landowners as a class. App. A-9.

provide for the acquisition, storage, and distribution of water for farming in the Tulare Lake Basin." 410 U.S. at 728.

Salyer therefore stands for the principle that a special district's representational scheme may reflect a legislative preference for the primary purpose the district was created to serve, even though other possible purposes (in *Salyer*, flood control) are subordinated. In this case, the "primary purpose, indeed the reason for [the Salt River Project's] existence" is similarly limited. As the parties have stipulated "[t]he primary purpose ... of the Salt River Project ... was for the development, storage and distribution of water for the irrigation of arid and semi-arid lands." (Facts ¶ 16, App. C-7-8).

Neither in *Salyer*, nor in *Associated Enterprises*, nor in any other case has this Court implied that the relevant test turns on size or number of persons affected. The relevant inquiry is an inquiry into function, and the Salt River Project's functions are highly limited. Its primary function is water storage, conservation, and delivery. This function falls far short of a general municipal water service. The Project does not own any water. It does not buy or sell water. It does not even treat water. It simply charges the people who own the water a fee for storing, conserving, and delivering their water to them. Its electric functions are authorized for one purpose and one only, to subsidize its water conservation and delivery functions. The adjunct nature of the Project's electric operations is a fact that the appellees have consistently attempted to avoid. It is a stipulated fact, however, and therefore cannot be avoided. (Facts ¶¶ 16 and 17, App. C-7-8).

The disproportionate effect of the activities of this District on the landowners it serves is also undeniable. The assets necessary for the original creation of the Salt River Project were the lands within the Association boundaries. But for the District's acreage voting, the Association's property and powers would never have been transferred to the

District, and there would be no District. The primary purpose of the District's activities, including the sale of electric power, is to make more effective and less costly the conservation and delivery of water to Association lands. These lands alone provide security for hundreds of millions of dollars of outstanding bonded indebtedness. They also stand as potential security for revenue bond indebtedness because, in the event revenues are insufficient to meet the bond obligations, the District could levy an acreage tax or require the Association to impose an acreage assessment. It is the landowners who ran the risk of the Project's creation, and the landowners who have benefited from it: "the assessed valuation of agricultural lands within the District and the Association is generally twice the assessed valuation of comparable agricultural lands outside the boundaries of the District and the Association." (Facts ¶ 55, App. C-22). And it is the landowners who run the risk that if the Court of Appeals' judgment becomes law, a new board of directors, elected entirely by a customer constituency, could lower electric rates to the point that an acreage assessment by the Association or an acreage tax by the District would have to be imposed. In that event, the owner of a $200,000 city house on a one-third acre lot would not pay the same tax as the owner of a $200,000 50-acre farm. The farm owner would pay exactly 150 times the taxes of the city dweller's property, and the owner of a one-section (640 acre) farm would pay 1,920 times as much. But under the Court of Appeals' decision, all three would exercise the same voting power to set in motion events leading to such a tax or assessment.

It is clear, therefore, that in this case as in *Salyer* the special district at issue exercises a limited range of functions and its activities have a disproportionate effect on landowners as a group. The Court of Appeals' basis for distinguishing *Salyer* is that "the size and nature of the projects of the District and the effect of its operations on all of the residents of Arizona are far more extensive than those of the district in *Salyer*." (App. A-5). This Court has

never suggested that the *Salyer* inquiry should turn on such subjective assessments, and whether this is to be the new test clearly raises a substantial federal question.

Aside from its lack of any supporting precedent or rationale, the Court of Appeals' test is wholly unworkable. If the applicability of *Salyer* is to depend on its size or the number of its customers, how large is too large, and how many customers is too many? The need for stability and predictability on the part of special districts and their constituencies would be thwarted by a constitutional standard dependent upon such elusive and undefinable matters of degree.

In summary, the District comes within the *Salyer* principle that control of special districts undertaken by landowners and with limited activities disproportionately affecting land may be allocated to those landowners. The Ninth Circuit's new rule that special districts otherwise within the *Salyer* principle fall outside it when they become big is unprincipled, unworkable, and wrong. The effect of the Court of Appeals decision is to expropriate the landowners of control of the water system they have built and operated for more than a half century as well as the power system they built to support water improvement. Plainly, the Ninth Circuit's new exception to *Salyer* presents a substantial federal question.

II.

The Salt River Project District Is In Substance a Private Business Entity; Therefore, the Equal Protection Clause Does Not Require Customer Control of It Any More Than for Other Private Businesses.

The whole point of this lawsuit—and the effect of the Court of Appeals' holding—is to change Arizona law dealing with economic, proprietary rights in the Salt River Project by substituting customer control for the present control by

its owners. The question is one of economic policy that belongs to the Arizona Legislature.[10]

The Arizona Supreme Court has held:

> The ultimate parties in interest in both the association and the district are the landowners within the identical boundaries of the association and the district. *Reichenberger v. Salt River Project Agricultural Improvement & Power District*, 50 Ariz. 144, 151, 70 P.2d 452, 455 (1937).

> The public does not own the District. . . . Instead the owners are the private land holders. The profits from the sale of electricity are used to defray the expense in irrigating these private lands for personal profit. The public interest is merely that of consumers of its product, for which they pay. . . . The District does not function to 'serve the whole people' but rather the District operates for the benefit of these 'inhabitants of the district' who are private owners. *Local 266, I.B.E.W. v. Salt River Project Agricultural Improvement & Power District*, 78 Ariz. 30, 44, 275 P.2d 393, 402-03 (1954).

Only last year, the Arizona Supreme Court held:

> The District's powers as a political subdivision are

---

[10] The strongest case that can be made for Appellees' position is that they are economically affected to the extent of the agricultural water subsidy. In 1975 this amounted to an average of $8.89 per customer. If the District's Board of Directors were under consumer control, electric rates, and therefore the water subsidy, would presumably be reduced. The net effect of the Arizona Legislature's acreage-based board representation, therefore, is a subsidy for water users. Yet it is clear that the Legislature could have directly provided such a subsidy without any constitutional impediment. This Court has consistently held that the states enjoy a broad latitude in granting subsidies and otherwise allocating their scarce resources. See *Dandridge v. Williams*, 397 U.S. 471, 487 (1970); *Jefferson v. Hackney*, 406 U.S. 535 (1972); *Ohio Bureau Employment Services v. Hodery*, 431 U.S. 471 (1977); *Mathews v. DeCastro*, 429 U.S. 181 (1976); *Alexander v. Fioto*, 430 U.S. 634 (1977); *Idaho Department of Employment v. Smith*, 434 U.S. 100 (1977); and *County Board of Arlington County v. Richards*, 434 U.S. 5 (1977).

> "limited to the purposes justifying its political existence" and the provisions of Art. 13, §7 do not alter the inherent characteristics of the District as "a business corporation with attributes of sovereignty which are only incidental, conferred for the purposes of better enabling it to function and accomplish the business and economic purposes for which it was organized." *City of Mesa v. Salt River Project Agricultural Improvement and Power District*, 92 Ariz. 91, 97, 103-4, 373 P.2d 722, 726, 731 (1962). Unlike other municipal corporations owned by the public and managed by public officials, the District is owned and managed by private landowners and, although the District supplies services to the public such as electrical power, the profits of its operations are used to defray the expenses of irrigation of private lands of the District landowners. *Neidner v. Salt River Project Agricultural Improvement & Power District*, 121 Ariz. 331, 332, 590 P.2d 447, 448 (1979).

These holdings by the Arizona Supreme Court as to the purposes, priorities, and powers of the District under state law are supposed to be binding on federal courts. *Hortonville Joint School District No. 1 v. Hortonville Education Association*, 426 U.S. 482, 488 (1976). The Court of Appeals, however, rejected these Arizona decisions and grounded its invalidation of the state statute in a very different understanding of the District's intended purposes, priorities, and powers:

> The District is a political subdivision of the State of Arizona with the legal status of a municipality. Ariz. Const., art. 13, §7. It is entitled to all the immunities and exemptions granted municipalities. Moreover, the scale of the District's operations simply does not permit the interpretation that the electric utility is a side venture that the District dabbles in to pick up a little extra money in order to benefit the landowners. *The operation of the utility has taken on independent significance.* In view of the magnitude of the electric utility operations and the large percentage of the water

> services which are used and paid for in a manner unrelated to land ownership, it would elevate form over substance to characterize the District as functioning solely for the benefit of landowners. (App. 44, A-7)[11] (Emphasis supplied).

The Court of Appeals has therefore grounded its holding on its view of Arizona law concerning which the Arizona Supreme Court has held otherwise. Since the rulings of the Arizona Supreme Court are controlling on these issues, the Court of Appeals' holdings—like the assumption as to Arizona law upon which it is based—must fall.[12]

The District supplies electricity at retail to electric consumers in Arizona. Arizona Public Service Company and Tucson Electric Power Company also supply electricity to retail consumers in Arizona. The reason that Arizona Public Service and Tucson Electric Power are in the power business is that several decades ago investors were willing to put their property (money) at risk, and to leave it at risk from that time to the present in anticipation of a profit. Profits from the operations of those companies belong to the shareholders, and control is vested in the shareholders. The companies were organized pursuant to the laws of the State of Arizona. They owe their existence to the Arizona corporation laws. It is also Arizona law that guarantees that both the return on capital and the right to elect the board of directors are vested in those who bear the entrepreneurial risk.

---

[11] This assertion by the Court of Appeals that the District does not function "solely for the benefit of the landowners" totally misses the point of *Salyer*. The mere benefit to customers of being able to buy a product made possible by the undertakings of the investors is not the kind of interest which carries with it a constitutional entitlement to control the enterprise. 410 U.S. at 430-31.

[12] The Court of Appeals' holding is also in conflict with the Stipulated Statement of Facts ¶ 34, App. C-14.

Similarly, the reason that the Salt River Project is in the power business is that several decades ago property owners put their property at risk and continue to leave it at risk for the hope of a return beneficial to them. It is a stipulated fact that but for acreage voting there would have been no District, because without the protection of acreage voting, the Association's landowners would not have transferred the Association's assets and powers to the District. (Facts ¶ 33, App. C-14).

The reason that Arizona Public Service and Tucson Electric Power were brought into existence was to return a profit to those who bore the risks of the creation and the continuing existence of those companies. The same is true of the Salt River Project. Instead of dividends and stock appreciation, the return is in the form of an agricultural water subsidy. The parties have stipulated that "viewed as a percentage of gross power revenues, the amount of the District power revenues utilized to meet water costs is approximately equivalent to the dividends paid to common stockholders in comparable electric companies." (Facts ¶ 56, App. C-23). The record also discloses that there are no significant differences among the rates charged by Arizona Public Service Company, Salt River Project, and Tucson Electric Power. Finally, while its payments are labeled "voluntary contributions in lieu of property taxes"[13] rather than taxes, "in substance, the electrical facilities of the District are taxed the same as privately owned electrical utility property." (Facts ¶ 57, App. C-23).

Thus, Arizona has provided two statutory schemes by which property owners may put their property at risk in the generation and sale of electricity in anticipation of benefits to themselves. There is no less reason to protect the investment-backed expectations of one set of property owners who place their assets at risk under the agricultural im-

[13] Ariz. Rev. Stat. Ann. §45-2201 *et. seq.* (1979 Supp.).

provement district statutes than to protect the expectations of another set of property owners who placed property at risk under a different set of statutes dealing with stock corporations.

The appellees and the Court of Appeals have emphasized that the activities of the Salt River Project are "important" to the appellees. Of course they are. They are important for the same reasons, and to the same extent, that the activities and the policies of Arizona Public Service and Tucson Electric Power are important to their customers. For those stock corporations, Arizona law provides no departure from the principle that control follows risk. The Constitution does not require different treatment for Salt River Project electric customers. At the very least, a holding that such a distinction lies outside the scope of Arizona's constitutional range of policy choice presents a substantial federal question.

CONCLUSION

The appellants submit that they are entitled to review by this Court as a matter of right.[14] The standard of review under §1254(2) need not be reached in this case, however, because the lower court's modification of the *Salyer* standard clearly presents a substantial federal question.

The *Salyer* test, distinguishing between general governmental units and special districts, is not only theoretically sound; it is also workable because it is keyed to function rather than size. The Ninth Circuit has created an important modification to this test. The net effect of that modification is to change the test itself. The Court of Appeals has created an exception to *Salyer* where in the Court's judgement a special district is too big.

This case is important to the owners of 236,000 acres of land who put their property at risk to bring the Salt River Project into being and who leave it at risk to keep the Project operating. It is also important to millions of people ac-

---

[14] See p. 16 n. 8, *supra*.

ross the country benefited by special districts which they have undertaken and whose representational schemes have now been called into question by the holding of the Court of Appeals.

Review by this Court is therefore required.

Respectfully submitted,

JON L. KYL
NEIL VINCENT WAKE
JENNINGS, STROUSS & SALMON
111 West Monroe
Phoenix, Arizona 85003
Tel. (602) 262-5881

REX E. LEE
2840 Iroquois Dr.
Provo, Utah 84601

Attorneys for Appellants

May 2, 1980

APPENDIX TO JURISDICTIONAL STATEMENT

TABLE OF CONTENTS

		Page
Appendix A:	Opinion (filed October 12, 1979, in the Court of Appeals)	A-1
Appendix B:	Judgment (filed October 12, 1979, in the Court of Appeals)	B-1
Appendix C:	Stipulated Statement of Facts (filed February 24, 1976, in the District Court)	C-1
Appendix D:	Judgment (filed March 17, 1976, in the District Court)	D-1
Appendix E:	Order denying rehearing (filed February 6, 1980, in the Court of Appeals)	E-1
Appendix F:	Notice of Appeal to the Supreme Court of the United States (filed February 13, 1980, in the Court of Appeals)	F-1

APPENDIX A

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

JAMES, ROLAND W., et al.,
Plaintiffs-Appellants,
v.
BALL, GERMAIN H., et al.,
Defendants-Appellees.

No. 76-1918
OPINION
[Filed October 12, 1979]

Appeal from the United States District Court for the District of Arizona

Before: CHOY and KENNEDY, Circuit Judges, and HALL,[1] District Judge.

KENNEDY, Circuit Judge:

This appeal, from an action commenced in the District of Arizona, challenges the constitutionality of Arizona statutes which provide that voting in elections for directors of the Salt River Project Agricultural and Improvement and Power District (the District) is limited to landowners, with votes essentially apportioned to owned acreage. The appellants are citizens of Arizona residing within the geographical boundaries of the District. Each appellant either rents land or owns less than one acre of land within the District and is thus excluded from the voting franchise. The action was brought under 42 U.S.C. § 1983. The Arizona statutes challenged are Ariz. Rev. Stat. §§ 45-909 and

[1] Honorable Peirson Hall, Senior United States District Judge for the Central District of California, sitting by designation.

45-983.[2] The district court found those state statutes are consistent with the requirements of the fourteenth amendment and granted the District's motion for summary judgment. We reverse that determination. The district court also denied certification of the suit as a class action, and as to that aspect of the case we affirm.

I. FACTS

Under the Reclamation Act of 1902, the federal government and the State of Arizona established a joint project for storage and delivery of water in the Salt River Valley. The project was limited to agricultural lands within the physical boundaries of the project.

The federal government built water storage and distribution facilities and hydroelectric facilities for the project. The Reclamation Act required that properties benefited by the project bear the costs of construction, and the Salt River Valley Water Users' Association was organized, under Arizona corporate law, to pay those costs. Only persons

---

[2] Section 45-909 provides:

> No person shall be entitled to vote at any election held under the provisions of this chapter unless he possesses all the qualifications required of electors for state officers under the general election laws, and is the owner of record of real property located within the boundaries of the district as of sixty days preceding a district election, and on which he has been assessed for county taxes . . .

Section 45-983 provies:

> [E]ach landowner possessing the qualifications of an elector shall be entitled to cast one vote at all elections . . . for each acre of land within the district owned by him.
>
> . . . [E]ach landowner possessing the qualifications of an elector who owns less than one acre of land within the district shall be entitled to a fractional vote . . . equal to the fraction of an acre owned by such elector.

After the district court rendered its decision, Ariz. Rev. Stat. §§ 45-909 & 45-983 were amended to read as quoted above. In reviewing the decision of the district court, we must look to the statute as it presently reads, not as it read at the time the district court rendered its decision. *Fusari v. Steinberg*, 419 U.S. 379, 387 (1975).

holding project land could belong to the Association; only Association members could receive water from the project. The Association's obligations became pro rata liens on the lands of Association members.

By the 1930's the Association found the costs of financing project facilities overly burdensome. To alleviate this problem, the Salt River Project Agricultural Improvement and Power District was established. The District qualified as a municipal corporation. The District's bonds were eligible for tax-exempt status so that interest costs for the project were substantially reduced.

Under a 1937 agreement between the Association and the District, the Association agreed to continue to perform all obligations connected with the operation and maintenance of the project on behalf of the District. The Association also agreed to give title to project facilities to the District, subject only to whatever rights the federal government retained under the original transfer to the Association. The District agreed to provide whatever capital and operating funds the Association needed to operate project facilities. Pursuant to the 1937 agreement, the District now operates the water storage and distribution facilities. In addition the District generates electric power, and today the District is the second largest utility in Arizona. Ninety-eight percent of the District's total revenues are derived from electricity operations.

Arizona statutes mandate the voting system for the District. The District is subdivided into ten electoral divisions, each of which elects one director and three council members. A president and vice-president are elected at large. Qualified electors have votes for these offices apportioned according to the amount of land they hold. In addition, qualified voters elect two at-large directors (to become four in 1980) on a per-person voting basis. The twelve-member

Board of Directors and thirty-member Council administer the District.[3]

II. EQUAL PROTECTION CLAIM

Since its decision in *Reynolds v. Sims*, 377 U.S. 533 (1964), the Supreme Court has repeatedly applied the principle of one person-one vote, and it has invalidated restrictions on voter eligibility in many different types of elections. *See Hill v. Stone*, 421 U.S. 289 (1975); *City of Phoenix v. Kolodziejski*, 399 U.S. 204 (1970); *Hadley v. Junior College District*, 397 U.S. 50 (1970); *Cipriano v. City of Houma*, 395 U.S. 701 (1969); *Kramer v. Union Free School District*, 395 U.S. 621 (1969). The Court has on two occasions struck down laws that limit voting to landowners. *City of Phoenix v. Kolodziejski, supra; Cipriano v. City of Houma, supra.* In *Salyer Land Co. v. Tulare Lake Basin Water Storage District*, 410 U.S. 719 (1973), however, the Supreme Court made an exception to *Reynolds* and upheld a state law which permitted only landowners to vote in an election to choose the directors of a water district. Because *Salyer*, and the companion case of *Associated Enterprises, Inc. v. Toltec Watershed Improvement District*, 410 U.S. 743 (1973) (per curiam), are the only cases since *Reynolds* which permit this type of voter restriction, the arguments of the parties here focus largely on the applicability of *Salyer* to the case before us.

In *Salyer*, plaintiffs challenged the voting system for a water district that allowed only landowners to vote, with votes apportioned according to the assessed valuation of the land owned. The Supreme Court, after examining the nature of the service provided by the particular district,

---

[3] The 1976 amendments to the statute added the at-large directors and fractional votes. Previously all voting was on a per-acre basis with a one-acre threshold requirement.

concluded that "by reason of its special limited purpose and of the disproportionate effect of its activities on landowners as a group," 410 U.S. at 728, the water storage district fell within an exception to *Reynolds*.

Critical to an understanding of *Salyer* is the factual setting of the case. The water district consisted of 193,000 acres, all of it agricultural land, 85% farmed by one or another of four corporations. It had a total population of 77 residents. Assessments against landowners were the sole means of paying expenses of the District, so that landowners as a class bore the entire financial burden. Moreover, the reason for the District's existence and continued operation was to provide water for farming, *id.* at 728, and, as stressed by the court, the primary effect of its operations was upon agricultural lands. Although the District had authority to undertake certain flood control activities, the Court found these powers were incident to the exercise of its primary functions of water storage and distribution. *Id.* at 728 n. 8. The Court specifically noted that the District provided "no other general public services such as schools, housing, transportation, utilities, roads, or anything else of the type ordinarily financed by a municipal body." *Id.* at 728-29.

The case at hand is quite different. Although at one time the Salt River District did bear some similarities to the district in *Salyer*, today the size and nature of the projects of the District and the effect of its operations on all of the residents of Arizona are far more extensive than those of the district in *Salyer*. The Salt River District is engaged in far-reaching electric power operations. It is the second largest electric utility in the State of Arizona and services nearly a quarter million persons. The utility owns five hydroelectric facilities and four steam generating plants; it is a partial owner of three coal-fired steam generating facilities; and it is a participant in the Palo Verde nuclear plant.

The water operations of the Salt River District are also significantly more diverse than those in *Salyer*. The District is not concerned solely with providing water for agriculture. Its formerly rural area encompasses today eight Arizona municipalities, including major portions of Phoenix. About 25% of the total water delivered by the District goes to these cities for municipal uses, and an additional 15% of the district water is delivered for other nonagricultural uses, such as schools, parks, playgrounds, and subdivision purposes. In view of the broad scope and impact of its activities, the Salt River District cannot be characterized as having a special limited purpose.

Further, the activities of this District do not disproportionately affect landowners. Unlike *Salyer*, nearly 40% of the water delivered by the District is used and paid for in a manner unrelated to agriculture or landownership. As to the electric operations, nearly all the citizens in the district are vitally affected in ways unrelated to ownership of real property. As the Supreme Court stated in *Cipriano v. City of Houma*, 395 U.S. 701, 705 (1969) (per curiam), "the operation of the utility systems—gas, water, and electric—affects virtually every resident of the city." It is true that there are $290,000,000 of general obligation bonds outstanding that are secured by a lien on district lands. However, all the bonds have been serviced out of earnings of the District; and since 1973, all capital improvements have been financed entirely from bonds secured solely by a pledge of revenues. The earnings of the District have been sufficient to permit it to issue a total of $600,000,000 worth of revenue bonds, and these are all *junior* to the general obligation bonds. Ninety-eight percent of the District's substantial revenues are produced by its electric utility operations. Thus, unlike *Salyer*, the financial burden of operating the District does not fall entirely or even primarily on landowners; it falls instead on the purchasers of electricity.

Appellees argue, nevertheless, that the operations of the District do have a disproportionate effect on landowners. Noting the profits from the sale of electricity are used to defray irrigation expenses, they compare the District to a private company which permits only stockholders to vote for the board of directors. The comparison fails, however. This is a public entity, not a private company. The District is a political subdivision of the State of Arizona with the legal status of a municipality. Ariz. Const., art. 13, § 7. It is entitled to all the immunities and exemptions granted municipalities. Moreover, the scale of the District's operations simply does not permit the interpretation that the electric utility is a side venture that the District dabbles in to pick up a little extra money in order to benefit the landowners. The operation of the utility has taken on independent significance. In view of the magnitude of the electric utility operations and the large percentage of the water services which are used and paid for in a manner unrelated to land ownership, it would elevate form over substance to characterize the District as functioning solely for the benefit of landowners.

The *Salyer* Court, in analyzing whether the Tulare District had a "special limited purpose," noted that the district did not exercise "normal governmental authority." 410 U.S. at 729. *See Hadley v. Junior College District*, 397 U.S. 50, 56 (1970), *Avery v. Midland County*, 390 U.S. 474, 485 (1968). Appellees cite this language and argue that in this case neither the water nor the electric power activities of the District are governmental in nature. We cannot agree. While *Salyer* can be understood as holding that the provision of water for agriculture is not a governmental function, the water services provided by the Salt River District are not confined to agricultural uses.

With respect to the electric utility operations, appellees rely on *Jackson v. Metropolitan Edison Co.*, 419 U.S. 345 (1974) as support for the proposition that the provision of electricity is not a governmental function. The question before us, however, is altogether different from the issue

confronted in *Jackson*. There the issue was whether or not a privately owned utility was so closely regulated by the state that its actions were state actions under the fourteenth amendment. *Salyer* did not hold that the fourteenth amendment did not apply to the water district. The case assumed there was state action and dealt with the question of the requirements of the fourteenth amendment in that situation. The issue is not whether the Salt River District is a state entity, but whether, having made the decision to create the entity and provide for the election of its directors, the state can deny the electoral franchise to citizens whose economic interest and natural environment are vitally affected by the entity's operations.[4]

Salyer suggests that for purposes of this type of inquiry, the operation of an electric utility is governmental in nature. In reaching its conclusion that the Tulare District did not exercise normal governmental authority, the Court specifically noted that the district provided "no other general public services such as schools, housing, transportation, utilities, roads, or anything else of the type ordinarily financed by a municipal body." 410 U.S. at 728-29. This conclusion is further confirmed by *Cipriano v. City of Houma*, 395 U.S. 701 (1969) (per curiam). There the Court concluded that the operation of a municipal utility system affected such a large percentage of the population that it

---

[4] In *Niedner v. Salt River Project Agricultural Improvement & Power District*, No. 13597 (Ariz. Jan. 10, 1979), the Arizona Supreme Court held that the District's termination of an employee did not constitute state action implicating the fourteenth amendment. In the present case appellants do not challenge an action of the District. Rather, they contend that the Arizona statutes mandating the voting scheme of the District violate the fourteenth amendment. There can be no doubt that the enactment of those state statutes by the state government constitutes state action. Accordingly, we need not determine now if we would agree with the Arizona Supreme Court's holding that the District's acts do not involve state action.

was unconstitutional to permit only property taxpayers to vote in elections called to approve the issuance of revenue bonds by the utility.[3]

In this court the District makes repeated reference to statutory and decisional authority indicating that the District's principal purpose and obligation is to provide water to the lands within it. If this legal proposition is correct, then the district will no doubt comply with it or be subject to corrective actions by the courts or the Arizona legislature. It is not, however, an argument that justifies trying to skew the electoral system as an indirect way to produce that result. The electric utility operations of the district are so substantial in scope and are so closely interwoven with the water delivery functions of the district that it is not a special limited purpose district whose operations have a disproportionate effect on landowners as a class. The principle of one person-one vote cannot be abridged in these circumstances.

Implicit in appellees' contention lies a legal assumption that is quite incorrect. It is, specifically, that disproportionate representation may be used to prevent electors who have a direct and substantial interest in a government entity's operations from out-voting certain other electors who own land that constitutes part of the security for the entity's financial structure. Disproportionate electoral representation, under this unstated but implicit rationale, serves as a safety device to protect property interests or expectations of landowners. We find no holding or intimation in any controlling Supreme Court decision that can support such a view. The rationale for departing from the one person-one vote standard is altogether different. It is that under certain conditions, of most narrow dimension, there may exist a state created entity, limited to operations with little effect on the general electorate and a substan-

---

[3] Subsequent to *Jackson*, the Supreme Court has cited and relied on *Cipriano* with no indication that its holding has been undercut by *Jackson*. *Hill v. Stone*, 421 U.S. 289, 296 (1975).

tially disproportionate effect on the interests of a discrete group permitted to vote. *Salyer*, 410 U.S. at 728-30. If, on the other hand, the operations of a state entity affect a diverse group of citizens, the franchise cannot be restricted to exclude those who have an interest in the election. *Hill v. Stone*, 421 U.S. 289 (1975); *City of Phoenix v. Kolodziejski*, 399 U.S. 204, 209 (1970); *Hadley v. Junior College District*, 397 U.S. 50 (1970); *Kramer v. Union Free School District*, 395 U.S. 621 (1969); *Cipriano v. City of Houma*, 395 U.S. 701 (1969) (per curiam).

III. CLASS ACTION CERTIFICATION

Appellants argue that the district court erred in refusing to certify the suit as a class action. Appellants' complaint filed on July 28, 1975 stated that it was brought on behalf of the named plaintiffs and their respective classes under rule 23(b)(2) of the Federal Rules of Civil Procedure. A motion for certification was not filed, however, until February 24, 1976, when appellants filed their motion for summary judgment. The district court denied certification. We affirm its ruling in this respect.

The determination of class action status rests within the sound discretion of the district court. *Montgomery v. Rumsfeld*, 572 F.2d 250, 255 (9th Cir. 1978); *Hornreich v. Plant Industries, Inc.*, 535 F.2d 550, 552 (9th Cir. 1976). Having reviewed the record, we cannot say that the district court abused its discretion. Here, the relief sought will, as a practical matter, produce the same result as formal class-wide relief. *See Craft v. Memphis Light, Gas & Water Division*, 534 F.2d 684, 686 (6th Cir. 1976), *aff'd on other grounds*, 436 U.S. 1 (1977); *Ihrke v. Northern States Power Co.*, 459 F.2d 566, 572 (8th Cir.), *vacated and remanded to dismiss as moot*, 409 U.S. 815 (1972). *Accord, Carter v. Butz*, 479 F.2d 1084, 1089 (3rd Cir.), *cert. denied*, 414 U.S. 1094 (1973). *See also Mead v. Parker*, 464 F.2d 1108, 1112 (9th Cir 1972) (dictum). *But see Fujishima v. Board of*

Educ., 460 F.2d 1355, 1360 (7th Cir. 1972). We are not unmindful of the benefits of a class action, *see* 3B Moore's Federal Practice § 23.40[3] at 23-296 n.9, but we conclude that in this case they would not be significant.

REVERSED in part, AFFIRMED in part.

Re: Roland W. James, et al. v. Germain H. Ball, No. 76-1918

HALL, District Judge, dissenting:

Upon a study of the majority opinion and a close reexamination of the briefs of the parties, I cannot escape the conclusion that what the court is holding is essentially that the plaintiffs, solely because they are users, are entitled to participate in all of the benefits as owners in the management and the operation of the defendant District. I fail to find anything in any of the cases cited or any of those upon separate research to indicate any "constitutional protection" to the plaintiffs who are simply owners and renters of property and have no interest or obligation whatsoever, substantial or otherwise, in repaying the hundreds of millions of dollars which have been borrowed and are now owed by the District to enable the district to give the plaintiffs the water and electricity which the plaintiffs use. The sale of electric power by the District was authorized by Congress in 1906, 34 Stats. 117: 43 U.S.C. § 522, when it was necessary to or would help in development of the project. The plaintiffs cannot make a claim that development and sale of power was not, and is not, necessary for the water. The majority opinion disregards this preemption of power.

The nonagricultural owners, who are residents and state voters, are given the equal right to vote as the agricultural owners, proportionate to the acreage ownership. But the plaintiffs seek here to make the owner of one-eighth of an acre [50 x 100 lot] *and* the renter who owns nothing, the same right to participate in the management of the hundred million dollar business of defendants as the landowner of any 500 acres of agricultural land whose land has

stood as security throughout the history of building the project and whose present share of lien for indebtedness is more than $3,000 an acre or a total of one and a half million dollars. The development of this project began 119 years ago in 1860. It became government operated after the Federal Reclamation Act of 1902. 32 Stats. 388: 43 U.S.C. § 371. To apply the same one man one vote to the Southern California Edison Company, for instance, would mean that user could have the same rights in management as the owner of $1,000,000 worth of stock.

Not only is there no provision in the Constitution, due process, equal protection or otherwise which suggests such a far-out result, but that is the logical result of the plaintiffs' contention.

The plaintiffs allege no property *damage* of any kind, no personal *inconvenience*, no personal *injuries*, nor *anything* which is measurable in the equivalent of money. In fact, their claim is founded, according to their Opening Brief, page 1, upon the claims that the "District's electric and water operations have an *important and substantial* effect and impact on their lives such that they are entitled to participate in district elections on an equal basis with all qualified electors regardless of property ownership." They ultimately actually seek a mandatory injunction, the equitable remedy which requires that the damage be *great* and *irreparable*.

The case, in my judgment, falls squarely within the holding of the Supreme Court in *Salyer Land Co. v. Tulare Lake Basin Water Storage District*, 410 U.S. 719 (1973) and the *Associated Enterprises, Inc. v. Toltec Watershed Improvement District*, 410 U.S. 743 (1973).

I will not attempt to improve upon the discussions concerning *Reynolds v. Sims*, 377 U.S. 533 (1964); *Phoenix v. Kolodziejski*, 399 U.S. 204 (1970); *Hadley v. Junior College District of Metropolitan Kansas City*, 397 U.S. 50 (1970); *Cipriano v. City of Houma, 395 U.S. 701 (1969); Kramer v. Union Free School District*, 395 U.S. 621 (1969); *Avery v.*

Midland Company, 390 U.S. 474 (1968); *Jackson v. Metropolitan Edison Co.*, 419 U.S. 345 (1974); and *Hill v. Stone*, 421 U.S. 289 (1975) which are done by the Supreme Court in the *Salyer* case.

The furnishing of electricty for public use, whether done by a city or otherwise, *is a proprietary business* and not a municipal or state business. It is "vested with public interest" only in the sense that it can be regulated by the state, *Nebbia v. New York*, 291 U.S. 502 (1934), which it is. It is not naturally for the protection of use of all persons. It is conducted for those persons who use it and pay for it. Thus, it is unlike a street, a road, a sewer, a gutter, street lights and so forth. Moreover, the granting of this right of a customer to the control of the property to which one has contributed nothing *merely because he is a customer* raises the question as to whether or not that in itself is in violation of the clause prohibiting the taking of private property for public use without just compensation as well as the due process clause.

The plaintiffs (Plaintiffs' Reply Brief, page 16) claim that the defendants are attempting to rely upon "undue deference to legislative schemes conceived of in days *now gone by*." Yet they claim to depend upon the legislative schemes set forth in the Constitution which have been adopted in "days gone by," more than 125 years before the defendants came into existence.

A detailed discussion of the controlling authorities in the case is as follows:

I. EQUAL PROTECTION CLAIM

A. Applicability of Salyer Test

Appellants challenge the voter qualification requirements for election of District officials, claiming that these requirements violate the equal protection clause of the four-

teenth amendment by invidiously discriminating against them and persons similarly situated who own less than one acre of real property.[6]

In *Salyer Land Co. v. Tulare Water District*, 410 U.S. 719 (1973), plaintiff challenged the voting system for a water district that allowed only landowners to vote, with votes apportioned according to the assessed valuation of the land owned. Tracing the development of equal protection analysis of apportionment and voter qualifications in local elections, the Supreme Court observed that in cases invoking a rigid one person, one vote standard, the local entities involved exercised "general governmental power"[7] or performed "important governmental functions."[8] *Id.* at 727. By contrast, the water storage district in *Salyer*, "although vested with some typical governmental powers, ha[d] relatively limited authority." Its primary purpose was simply to provide for the acquisition, storage, and distribution of water within the district. It provided "no other general public services" such as schools, fire or police protection, buses, or roads. Moreover, the Court noted, the district's actions "disproportionately affect landowners," thus supporting limitation of the franchise to them. *Id.* at 728-29.

---

[6] The district court granted summary judgment in favor of the District. Summary judgment may be granted " 'only where there is no genuine issue of any material fact or where viewing the evidence . . . in the light most favorable to the adverse party, the movant is clearly entitled to prevail as a matter of law.' " Caplan v. Roberts, 506 F.2d 1039, 1042 (9th Cir. 1974). *See* Fed. R. Civ. P. 56.

Here the parties have stipulated to the facts. Such stipulations conclusively establish the material facts they contain. United States v. Huston, 547 F.2d 104, 107 (9th Cir. 1976). Our task, then, is to determine whether the district court reached the proper legal conclusion in granting summary judgment.

[7] *E.g.*, Phoenix v. Kolodziejski, 399 U.S. 204 (1970); Cipriano v. City of Houma, 395 U.S. 701 (1969).

[8] *E.g.*, Hadley v. Junior College District, 397 U.S. 50 (1970); Kramer v. Union School District, 395 U.S. 621 (1969).

By distinguishing the Tulare Water Storage District from the government bodies involved in previous representation decisions, the Court explicitly denied the applicability of strict one person, one vote equal protection analysis to such special districts. *See Holt Civic Club v. Tuscaloosa*, 47 U.S.L.W. 4008, 4011 (U.S. Nov. 28, 1978). The Court based this distinction largely upon its decisions in *Hadley v. Junior College District*, 397 U.S. 50 (1970) and *Avery v. Midland County*, 390 U.S. 474 (1968).

Avery involved an equal protection challenge to the method of selecting Midland County, Texas, officials that gave disproportionate influence to voters in thinly populated districts. The Court stated the general rule:

> When the State apportions its legislature, it must have due regard for the Equal Protection Clause. Similarly, when the State delegates lawmaking power to local government and provides for the election of local officials ... it must insure that those qualified to vote have the right to an equally effective voice in the election process.

390 U.S. at 480. The county argued that this rule should not extend to the county governing board because the board performed administrative rather than legislative functions. The Court noted, however, that the board possessed the "lawmaking power" "to make a large number of decisions having a broad range of impact on all the citizens of the county." The board determined tax rates, equalized assessments, issued bonds, and allocated the county's funds with broad statutory authority. The board also made "both long-term judgments about the way Midland County should develop—whether industry should be solicited, roads improved, recreation facilities built and land set aside for schools—and immediate choices about competing needs." *Id.* at 483. Given these broad powers, the Court concluded that the general rule should apply to the county board. *Id. at 484-85.*

The county also argued that the extra influence of the thinly populated districts was justified because the county officers' work "disproportionately concern[ed]" rural areas. *Id.* at 483. Because the board possessed authority to make numerous decisions affecting all of the county's citizens, the Court did not decide whether this claim, if true, would support apportionment "in ways which give greater influence to the citizens most affected . . ." *Id.* at 484. Instead, the Court summarized its decision:

> We hold today only that the Constitution permits no substantial variation from equal population in drawing districts for units of local government having *general governmental powers* over the entire geographic area served by the body.
>
> This Court is aware of the immense pressures facing units of local government, and of the greatly varying problems with which they must deal. The Constitution does not require that a uniform straitjacket bind citizens in designing mechanisms of local government suitable for local needs and efficient in solving local problems . . . .
>
> . . . .
>
> . . . Our decision today is only that the Constitution imposes one ground rule for the development of arrangements of local government: a requirement that units with *general governmental powers* over an entire geographic area not be apportioned among single-member districts of substantially unequal population.

Id. at 484-86 (emphasis added).

Thus, *Avery* recognized the necessity for an escape from the "straitjacket" application of equal protection requirements when dealing with local government units lacking general governmental powers. This contemplated exception did not require the alternative justification for disproportionate voting rights argued in that case: that the exercise of the county officers' powers had a disproportionate impact upon particular citizens.

The Court similarly decided *Hadley*, involving an equal protection challenge to apportionment that diluted plaintiffs' votes for school district trustees. Though the Court opined that an exception to the strict application of equal protection requirements would be observed where a local body's functions were "far removed from normal governmental activities *and* . . . disproportionately affect different groups," 397 U.S. at 56 (emphasis added), its analysis demonstrates that strict one person, one vote requirements will not be imposed when the first of these elements is absent. The Court stated:

> Appellants . . . argue that the junior college trustees exercised *general governmental powers* over the entire district and that under *Avery* the State was thus required to apportion the trustees according to population on an equal basis, as far as practicable. Appellants argue that . . . the trustees can levy and collect taxes, issue bonds . . ., hire and fire teachers, make contracts, collect fees, supervise and discipline students, pass on petitions to annex school districts, acquire property by condemnation, and in general manage the operations of the junior college . . . . We feel that these powers, while not fully as broad as those [in *Avery*], certainly show that the trustees performed *important governmental functions* [which] have sufficient impact throughout the district to justify the conclusion that . . . *Avery* should also be applied here.
>
> . . . .
>
> . . . [W]e see nothing in the present case that indicates that the activities of the trustees fit in [the *Avery* exception]. *Education has traditionally been a vital government function, and these trustees . . . are governmental officials in every relevant sense of that term.*

Id. at 53-54, 56 (emphasis added). Thus the Court concluded that the exception enunciated in *Avery* was inapplicable solely because the officials in *Hadley* possessed vital and traditional governmental powers. Indeed, its conjunctive inclusion of the fact that these powers had an

effect "throughout the district" appears as a prerequisite to application of the strict equal protection requirements of *Avery*, not to the availability of an exception from them.

Salyer reinforces this emphasis on whether the local body possesses "general governmental powers" and performs "important governmental functions." The *Salyer* court explicitly relied upon *Hadley* and *Avery* in fashioning its exception to the strict one person, one vote standard. And although the Court noted that the Tulare Water Storage District also had a disproportionate impact on landowners, its reference to this fact in "not only, but also" fashion underscored its primary reliance upon the fact that the district lacked general govermental powers. I conclude that *Salyer's* reference to disproportionate effect was not meant to expand the constitutional requirements of *Avery* and *Hadley;* the critical inquiry remains focused on whether the local body performs traditional general governmental functions. *See Salyer*, 410 U.S. at 727.

The Salt River District does not perform traditional general governmental functions. The legislature has defined the District's purpose as securing water necessary to improve agricultural land. Ariz. Rev. Stat. § 45-903. *See Uhlmann v. Wren*, 97 Ariz. 366, 374, 401 P.2d 113, 124 (1965). The District's powers are incidental to that task. *Local 266 v. Salt River Project Agricultural Improvement & Power District*, 78 Ariz. 30, 43, 275 P.2d 393, 402 (1954). This limited role does not entail the exercise of general governmental powers.

Moreover, though some municipalities furnish water and electric service, these functions are not traditionally governmental services. In another context, the Supreme Court has noted that "the supplying of utility service is not traditionally the exclusive prerogative of the State" and is not "traditionally associated with sovereignty." *Jackson v. Metropolitan Edison Co.*, 419 U.S. 345, 353 (1974). *Cf. National League of Cities v. Usery*, 426 U.S. 833, 854 n.18 (1976). And the Arizona Supreme Court has described the

Salt River District as having business and economic rather than governmental purposes. *Local 266,* 78 Ariz. at 43, 275 P.2d at 402.

Finally, even if some publicly owned utilities can be compared to vital governmental services, this District is not such a utility. The Arizona Supreme Court has written of the District:

> Most municipal corporations are owned by the public and managed by public officials .... Such is not the case here .... The public does not own the District. A governmental entity such as a city or town does not manage or benefit from the profits of this District. Instead the owners are private landholders. The profits from the sale of electricity are used to defray the expense in irrigating these private lands for personal profit. The public interest is merely that of consumers of its product, for which they pay .... *The District does not function to "serve the whole people" but rather the District operates for the benefit of these "inhabitants of the district" who are private owners.*

Local 266, 78 Ariz. at 44, 275 P.2d at 402-03. (emphasis added).

In short, the District does not perform functions akin to those of general governmental bodies. Accordingly, the *Salyer* test and not the strict one person, one vote standard of equal protection is applicable in evaluating the District's voter qualification requirements.

The District's disproportionate impact upon District landowners strengthens our conclusion that the *Salyer* test should be employed here. Although the District's policies affect electrical consumers both within and without the District's geographical area as well as landowners within the District, both the legislative purpose and practical effect of the District's activities disproportionately concern the landowners.

The Arizona legislature created the District to benefit landowners in the District. *See Uhlmann*, 97 Ariz. at 374, 401 P.2d at 118-19; *Local 266*, 78 Ariz. at 43, 275 P.2d at 402-03. For example, the District may sell surplus water and power to those outside the District in order "to reduce the cost of irrigation, drainage and power to the owners of the lands in the district ...." Ariz. Rev. Stat. § 45-903 (A)(7). Accordingly, revenues from electrical operations have been used to subsidize water functions. The parties characterize this subsidy to District landowners as equivalent in amount to dividends paid to common stockholders in electric utility companies. The parties' concept of the District's electric operations as a form of income for District landowners underscores the District's purpose to benefit District landowners.

Just as landowners within the District benefit disproportionately from successful District operations, so too financial reverses of the District disproportionately affect them. Arizona state law provides that bonds issued by the District create liens upon the real property within the District. Ariz. Rev. Stat. § 45-1047(A). And a state statute specifically provides for raising District revenues by taxing the landowners in the District. Ariz. Rev. Stat. § 45-1014(B). Thus, District financial losses have a disproportionate effect on landowners. This potential liability is particularly significant since the Supreme Court in *Salyer* based its finding of disproportionate effect largely on the fact that Tulare Water District charges constituted a lien upon land within the district. 410 U.S. at 729.

I conclude that the District's actions disproportionately affect District landowners as a group in terms of District purposes, its successful operations, and the liabilities it may create. Thus, whether *Salyer* is read as emphasizing possession of general governmental powers, as we think proper, or

as warranting consideration of the proportionality of effect as well, the challenge to the District's electoral system must be evaluated according to the standards set forth in that decision.

B. Acceptability of District's Voting System

In *Salyer*, the Supreme Court wrote:

> Even though appellants derive no benefit from the [strict one person, one vote] cases, they are, of course, entitled to have their equal protection claim assessed to determine whether the State's decision to deny the franchise to residents of the district while granting it to landowners was "wholly irrelevant to achievement of the regulation's objectives." *Kotch v. River Port Pilot Comm'rs*, 330 U.S. 552, 556 (1947).

410 U.S. at 730. I find that the Salt River District's voting scheme is not wholly irrelevant to the legislative objectives in creating the District.

In providing for the creation of the District, the Arizona legislature intended to assist landowners in irrigating their land. *See Uhlmann*, 97 Ariz. at 374, 401 P.2d at 118-19; *Local 266*, 78 Ariz. at 43, 275 P.2d at 402-03; Ariz. Rev. Stat. § 45-903. Vesting voting control in those landowners, thereby allowing them to control the agency designed to benefit them, is clearly not irrelevant to that legislative objective.

Moreover, in *Salyer*, the Supreme Court found that the California legislature "could quite reasonably have concluded" that landowners should be given control of the Tulare district because the district's liabilities would fall upon the landowners in the form of liens upon their lands. 410 U.S. at 730. Potential liabilities of the Salt River District also fall upon the District landowners as liens and tax assessments upon the land. Ariz. Rev. Stat. §§ 45-1047(A), 45-

1014(B). The Arizona legislature, therefore, could similarly have reasonably concluded that the same landowners responsible for the District's potential liabilities should have voting control of the District.

Appellants respond that all persons who use District water or electricity are interested in District policies. But as the Supreme Court wrote in *Salyer*:

> No doubt residents within the district may be affected by its activities. But this argument proves too much. Since assessments imposed by the district become a cost of doing business for those who farm within it, and that cost must ultimately be passed along to the consumers of the produce, food shoppers in far away metropolitan areas are to some extent likewise "affected" by the activities of the district. Constitutional adjudication cannot rest on any such "house that Jack built" foundation, however.

410 U.S. at 730-31.

I conclude that the District's voting system is not wholly irrelevant to the legislature's objectives in creating the District. Accordingly, the system does not violate the equal protection provisions of the fourteenth amendment.[9]

---

[9] Appellants suggest that corporations are unconstitutionally denied the right to vote in District elections. I conclude below, § IV *infra*, that the district court did not abuse its discretion in refusing class certification. Because the plaintiffs are all noncorporate individuals, "the [corporate] claim of these petitioners falls squarely within the prudential standing rule that normally bars litigants from asserting the rights or legal interests of others in order to obtain relief from injury to themselves." Warth v. Seldin, 422 U.S. 490, 509 (1975). *See* Construction Industry Association of Sonoma County v. City of Petaluma, 522 F.2d 897, 904 (9th Cir. 1975), *cert. denied*, 424 U.S 934 (1976). I therefore do not consider this contention.

II. Irrebuttable Presumption Claim

Appellants additionally claim that the District's voting system impermissibly creates two irrebuttable presumptions: that only landowners are qualified to participate in District elections, and that individual interests in District matters are affected by the size of land holdings.

The Supreme Court has indicated that at times determination of eligibility for public benefits must be made on a case-by-case basis because generalized rules of eligibility inadequately reflect variations within administratively defined classes. *See, e.g., Vlandis v. Kline,* 412 U.S. 441, 452 (1973). In the instant case, however, the underlying basis of appellants' claim is not that individualize resolution of voter qualification is needed to reflect differences in voters' interests. Instead, appellants argue that the present voting system deals unfairly with the entire class of small landowners and renters. Irrebuttable presumption analysis is not well suited for such claims.

Moreover, within the context of Supreme Court decisions dealing with irrebuttable presumptions, the presumptions embodied in the District's voting system are acceptable. In *Matthews v. Lucas,* 427 U.S. 495, 509 (1976), the Supreme Court instructed that

> presumptions in aid of administrative functions, though they may approximate, rather than precisely mirror, the results that case-by-case adjudication would show, are permissible under the Fifth Amendment, so long as that lack of precise equivalence does not exceed the bounds of substantiality tolerated by the applicable level of scrutiny.

See Weinberger v. Salfi, 422 U.S. 749, 784 (1975). Because we concluded earlier that the District's voting system meets the standard of *Salyer,* the "applicable level of scrutiny" in the instant case, the presumptions implicit within that system are not impermissible. Indeed, the Supreme Court's

conclusion in *Salyer* that a voting system similar to the instant scheme was constitutional implies that the Arizona legislature may make precisely the kind of presumptions necessarily underlying such voting systems.

III. Class Action Certification

Appellants argue finally that the district court erred in refusing to certify the suit as a class action. The determination of class action status rests within the sound discretion of the district court. *Montgomery v. Rumsfeld*, 572 F.2d 250, 255 (9th Cir. 1978); *Hornreich v. Plant Industries, Inc.*, 535 F.2d 550, 552 (9th Cir. 1976). Having reviewed the record, I cannot say that the district court abused its discretion. Moreover, given my rejection of appellants' claim that the voting statutes are unconstitutional on their face, the denial of class certification, even if improper, could not have infringed the rights of plaintiffs or members of the purported class.

I would affirm the lower court in all respects.

APPENDIX B

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

JAMES, ROLAND W., FITZSIMMONS, JAMES R., BRAHS, DWIGHT M., SACCO, FRANK, and MAFFEO, JOHN H., on behalf of themselves and their respective classes,

Plaintiffs/Appellants,

vs.

BALL, GERMAIN H., CONOVALOFF, ALEX M., ROSSEAU, BILL, SMITH, LEO C., WILLIAMS, JOHN M., JR., HURLEY, THOMAS P., et al.,

Defendants/Appellees.

JUDGMENT
No. 76-1918
DC CV
75-498-PHX
WEC
[Filed October 12, 1979]

APPEAL from the United States District Court for the District of Arizona (Phoenix)

THIS CAUSE came on to be heard on the Transcript of the Record from the United States District Court for the District of Arizona (Phoenix) and was duly submitted.

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court, that the judgment of the said District Court in this Cause be, and hereby is reversed in part and affirmed in part.

Filed and entered October 12, 1979

APPENDIX C

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA

ROLAND W. JAMES, et al., Plaintiffs, vs. GERMAIN H. BALL, et al., Defendants.	No. CIV 75-498 PHX WEC STIPULATED STATEMENT OF FACTS [Filed February 24, 1976]

Plaintiffs and Defendants present herewith a joint stipulated statement of facts, along with exhibits, which they agree may be considered in connection with their simultaneously-filed cross Motions for Summary Judgment. The facts stated are admitted as true by both parties only for purposes of their respective motions for summary judgment.

Both parties contributed separate facts to the statement, but for sake of continuity it was agreed to organize the statement in the form presented. Nothing should be inferred from either the order or length of particular facts stated. Further, while admitting the truth of all facts stated, each party reserves the right to contest the materiality or relevance of any fact.

DATED this 24th day of February, 1976.

Bruce Meyerson
Arizona Center for Law in the Public Interest
P. O. Box 2783
Phoenix, AZ 85002
Attorney for Plaintiffs

JENNINGS, STROUSS & SALMON

By J. A. Riggins, Jr.
Jon L. Kyl
Neil Vincent Wake
111 West Monroe
Phoenix, Arizona 85003
Attorneys for Defendants

INDEX

Section	Paragraphs	Title	Page
I.	1-4	PARTIES	3
	1	A. Nature of Action	3
	2-3	B. Plaintiffs	3
	4	C. Defendants	4
II.	5-18	HISTORY OF RECLAMATION IN THE SALT RIVER VALLEY	4
	5-7	A. The Salt River Federal Reclamation Project	4
	8-18	B. Salt River Valley Water Users' Association	5
III.	19-58	THE SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT AND POWER DISTRICT	8
	19-25	A. History	8
	26-30	B. Administration and Voting of the District	12
	31-34	C. District-Association Relationship	13
	35-37	D. District Voting Information and Statistics	14
	38	E. Criteria for Inclusion of Lands Within District Boundaries	15
	39-45	F. Water Functions of the District	16
	46-48	G. Power Function of the District	19
	49-56	H. Financing of the Salt River Project by the District and the Association	21
	57-58	I. District Tax Payments	23
IV.	59-69	MISCELLANEOUS	23

STIPULATED STATEMENT OF FACTS

I. PARTIES

A. Nature of Action

1. This action challenges the constitutionality of the landowner and acreage voting system of the Salt River Project Agricultural Improvement and Power District ("District"), an agricultural improvement district formed under the laws of the State of Arizona, A.R.S. § 45-901, *et seq.*, which is comprised of 260,188 acres located in Maricopa County, Arizona. The District and the Salt River Valley Water Users' Association ("Association"), a corporation organized under the laws of the Territory of Arizona in 1903, operate the Salt River Project, a federal reclamation project. (The phrases "Salt River Project" and "Salt River Reclamation Project" will be used synonymously herein to refer to the federal reclamation project.)

B. Plaintiffs

2. Plaintiffs FRANK SACCO and DWIGHT M. BRAHS are citizens and registered voters of the State of Arizona who reside on District lands. These plaintiffs have no interest in any real property located within the District. Each is not eligible to participate in the District's elections because he does not own real property as required by A.R.S. § 45-909 (1975 Supp.). It is agreed that there are many others similarly situated. These two plaintiffs desire to vote in District elections on an equal basis with all persons residing within the District and otherwise qualified to vote for state officers.

3. Plaintiffs ROLAND W. JAMES, MARY FITZSIMONS, JAMES R. FITZSIMONS and JOHN H. MAFFEO are citizens and registered voters of the State of Arizona residing on District lands. Along with a substantial number of others, these plaintiffs have ownership interests in fractional acres of real property located within the District, and are entitled to cast a fractional vote in District elections.

Each of these four plaintiffs desires to exercise his or her elective franchise in District elections on an equal basis with other persons residing within the District and otherwise qualified to vote for state officers.

C. Defendants

4. Defendants GERMAIN H. BALL, ALEX M. CONOVALOFF, BILL ROUSSEAU, LEO C. SMITH, JOHN M. WILLIAMS, JR., THOMAS P. HURLEY, WILLIAM P. SCHRADER, JOHN S. HOOPES, W. LARKIN FITCH, THOMAS J. FINLEY and KARL F. ABEL are the members of the Board of Directors of the District, and its President, respectively.

II. HISTORY OF RECLAMATION IN THE SALT RIVER VALLEY

A. The Salt River Federal Reclamation Project

5. Irrigation of the Salt River Valley, within which the Association and the District boundaries lie, was begun by settlers in about 1867. The river flow was erratic, varying from a small stream to enormous floods. Shortly after settlement began, especially during years of drought, the supply of water at low river stages was inadequate for the land in cultivation. River flows in excess of immediate needs or canal capacities were lost, due to the lack of storage facilities. Maintenance of the brush and rock diversion dams also became a problem, for they were often washed out at the beginning of a flood and could not be replaced until the water was again low in the river. Years of good water supply were followed by years of drought, causing the loss of valuable vineyards, farm lands and orchards. In 1895 a few of the farmers in the Valley formed what they called the "Farmers Protective Association", the prime purpose of that Association being to secure legislation concerning water rights. Various farmers from the Salt River Valley were instrumental in lobbying the Reclamation Act of 1902 through the United States Congress for the purpose of securing comprehensive federal assistance for the systematic reclamation of lands of the Salt River Valley. The Salt

River Project was originally authorized by the Secretary of the Interior on March 14, 1903, in accordance with the Reclamation Act of 1902 (32 Stat. 33), and was the first reclamation project authorized under the Federal Reclamation Act.

6. Shortly after the authorization of the Salt River Reclamation Project, the federal government established a Board of Survey to determine what lands were capable of being benefited for agricultural purposes by the Project. In selecting those lands, the Board of Survey excluded lands actually put to urban uses (referred to as "townsite lands"). The area so designated by the Board Survey as eligible for Salt River Project water is referred to as the "Salt River Reservoir District."

7. After authorization of the Salt River Project in 1903, the Government constructed a large dam and reservoir on the Salt River known as the Theodore Roosevelt Dam. It also purchased and consolidated the various canals, ditches and other distribution facilities to form a highly developed irrigation system within the Salt River Project area.

B. Salt River Valley Water Users' Association

8. Immediately after the Salt River Project was created, the United States needed a contracting entity to assure repayment of construction costs allocated to each benefited landowner under 43 U.S.C. § 461 *et seq.* for construction of Theodore Roosevelt Dam. The Salt River Valley Water Users' Association was organized as an Arizona corporation under the laws of the Territory of Arizona in 1903 to serve as the entity with which the United States could deal as representative of the landowners for whose benefit the irrigation system was being constructed. The Articles of the Association were worked out by the joint effort of the landowners under the proposed project and the officials of the United States Reclamation Service. Shareholders of the Association are the owners of land which has been subscribed into the Association.

9. The contract between the Association and the United States providing for cooperation between the Association shareholders and the United States Government in the construction and financing of the Salt River Project was entered into on June 25, 1904, and is attached hereto as Exhibit B. In the 1904 contract the Association assumed the obligation to repay to the United States all construction charges owed to the United States by its member-shareholders for the irrigation system constructed for their benefit. The Government required membership in the Association as a condition of receipt of stored and developed water from the reclamation project. Exhibit B, Para. 2. The Secretary of the Interior reserved the right to approve or prescribe by-laws of the Association pertaining to water use and administration of the Association. Exhibit B, Para. 8.

10. The irrigation system for the lands of the Association's shareholders was operated by the United States Reclamation Service up to September 6, 1917, when the United States Government and the Association (after approval of the contract at an Association shareholders' election) entered into a further contract (attached hereto as Exhibit C) by which the operation, maintenance, and control of the Salt River Project were vested in said Association subject, however, to termination by either party in the manner therein stated, and the payment of the construction charges amounting to $10,166,021.97 due the United States.

11. Under the 1917 contract and later amendments thereto, the Association has operated and maintained, and is now operating and maintaining, the Salt River Project water delivery system and has under its Articles and By-Laws levied and collected assessments upon the lands of its shareholders to pay for operation and maintenance, for the construction charges due the United States, and for the improvements, additions and betterments of the said works made from time to time by the Association.

12. Before the management of the Salt River Project was taken over by the Association, the United States had constructed as incident thereto with government and Association funds, a hydroelectric power system, at a cost of approximately $4,500,000, to produce power to be used by the Association in support of its primary irrigation activities.

13. In order to protect its investment, and increase the revenue therefrom and the amount of water available for irrigation, the Association undertook in the 1920's and 1930's to increase the number of water storage and hydroelectric facilities. In addition to Mormon Flat Dam, constructed in 1923-25, the Association constructed Horse Mesa Dam in 1924-27 and Stewart Mountain Dam in 1928-30.

14. The Association contracted with the United States on November 6, 1935 (Exhibit F herein), later supplemented on October 14, 1936 (Exhibit G herein), for the construction of Bartlett Dam to store water on the Verde River, and for various repairs to Project works. Of the $7,500,466 cost of that project, the Association assumed the obligation to repay to the United States $6,550,361. Of the latter amount, $725,282 remains unpaid by the Association as of December 31, 1975.

15. Until 1937 the Association continued to manage, operate and maintain the Salt River Project directly. Financing for expansion of the water and power system was obtained through the sale of corporate bonds of the Association, secured by lien upon Association subscribed lands, as reflected in the list of bond issues set forth in Paragraph 50, *infra*.

16. The primary purpose for the acquisition and construction of the Salt River Project under the Federal Reclamation acts was for the development, storage and distribution of water for the irrigation of arid and semi-arid lands. The development, storage, and distribution of water to Association-subscribed lands was the primary purpose of

the Association in contracting with the United States to guarantee the repayment of construction funds and to operate the Salt River Project.

17. The development and sale of electrical power in connection with the Salt River Project by the United States and by the Association was undertaken not for the primary purpose of providing electricity to the public but to support the primary irrigation functions by supplying power for reclamation uses and by producing revenues which could be applied to increase the amount and reduce the cost of water to Association subscribed lands.

18. The Association under its current Articles of Incorporation derives its income from the following sources:

(1) Mandatory Water Assessments. (Art. XII, § 3(b)).

(2) Additional Water Delivery Charges. *Id.*

(3) Power Revenues. (Art. XII, 1, First.)

(4) Stock Assessments. (Art XII, § 1, Second, § 4.)

The Association's ultimate financing power if other revenues are insufficient is its acreage assessment power, which was last exercised in 1951. Association assessments when levied remain until paid a lien on the lands of the shareholders against which they are levied and on the stock appurtenant thereto.

The rights and obligations of membership in, and subscription to the Articles of, the Association are appurtenant to the land and run with the land.

III. THE SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT AND POWER DISTRICT

A. History

19. In the mid-1930's the Association sought for a means of reducing the expenses of the operation of the Project, including interest expense. It therefore occurred to the officers of the Association that if a District could be organized under the Agricultural Improvement District Act which would issue its bonds for the purpose of providing money to take up the outstanding bonds of the Association, the bonds of the District could be placed at a much lower rate

of interest than those issued by the Association as a private corporation, and the shareholders of the Association, who, of course, would ultimately pay the District bonds, would thus be saved a very large sum of money each year. The Agricultural Improvement District Act provided for the organization of Districts which would be authorized to provide means of irrigation to the lands within such districts.

20. The Agricultural Improvement District Act, Revised Code of 1928, §3467 through 3514; 1922 Laws, Ch. 23, allowed creation of districts to be governed by three- or five-member boards. R.C. §3471. Such districts could be formed only within federal reclamation projects. R.C. §3467. All landowners were entitled to one vote each in the elections of such districts. R.C. §3473. Such districts enjoyed an *ad valorem* taxing power on real property within the District. R.C. §3498.

21. In January 1936, proceedings were initiated before the Maricopa County Board of Supervisors to create an agricultural improvement district coextensive with the boundaries of Association member land. Many shareholders of the Association objected to the formation of a district or contracting with it by the Association since voting in the district was per capita rather than by acre as in the Association. Many shareholders were also opposed to the *ad valorem* taxing power of the proposed district. The Association, therefore, determined not to proceed with final formation of a district until those and other objections could be resolved.

The Association therefore requested amendment of the Agricultural Improvement District Act to allow all landowners to vote on an acreage basis, and to establish a one-acre minimum for voting, as was the practice under Association elections. The Association also requested amendment of agricultural improvement districts' taxing power from *ad valorem* to acreage to conform such taxing power to the assessment power of the Association.

The Association also requested that the Legislature amend the Agricultural Improvement District Act by including among the purposes of such districts the reduction of the cost of irrigation, drainage and power to the owners of the land in the district by the sale of surplus water or power, the financing or refinancing as its own obligation of debt incurred or proposed to be incurred by any public or private agency in the construction, maintenance, improvement or replacement of the structures and equipment necessary or useful for the accomplishment of any of the purposes of the District. Cf. A.R.S. § 45-903 A 7 and 8.

22. The Legislature in November 1936 (Laws 1st Sp. Sess. 1936, c. 10) enacted the amendments requested by the Association.

The acreage taxing power of agricultural improvement districts (A.R.S. 45-1014) is now identical to the assessment power of the Association, in that District taxes are assessed on an acreage basis and become liens upon lands until paid (A.R.S. § 45-1015 B [1956]), and therefore have the same effect as Association assessments.

23. The officers of the Association caused a District to be organized under the Act encompassing the land which had subscribed to Association membership, provided for the issuance by the District of $13,000,000 of its bonds, and then caused a contract to be entered into between the District and the Association, the substance of which was, *inter alia*, that the District was to issue bonds and turn the proceeds over to the Association, and levy the necessary taxes to pay the bonds as they became due, while the Association was to use the proceeds of the bonds to pay off $13,000,000 of its outstanding indebtedness, and to collect from its members a sufficient amount of money to reimburse the District for the amount of taxes it was compelled to levy to meet the new bonds. The relationship between the Association and the District has often been described by the Arizona Supreme Court as one of "alter egos in substance, though not in law." The ultimate result of these transac-

tions and the District's status as a municipal corporation, with its securities exempt from taxation, has been a savings of millions of dollars to the shareholders of the Association.

24. Under the terms of the contract of March 22, 1937 between the Association and the District (Exhibit H, *infra*), the Association transferred, subject to the paramount interest of the United States, all its property to the District and agreed to continue to perform all its obligations in connection with the care, operation, and maintenance of the Salt River Project on behalf of the District. The District agreed to provide capital and operating funds to the Association to support the operation of the Project by the Association. As amended in 1944 and 1949, the contract now provides that the District itself operate the power function of the Salt River Project. The Association continues to operate the water delivery system as an agent for the District.

25. In the 1940's the Commissioner of Internal Revenue asserted deficiencies in income tax against the Association for power revenues applied to offset water costs without deduction for losses incurred in water operations. The Association set up a variety of defenses to this assessment, but in 1949 the dispute was settled by the payment of $100,000 in satisfaction of all past assessments. As a part of this settlement, the Association amended its 1937 contract with the District to have the District assume the actual operation of the power system to make clear that the revenues of the power system are exempt from federal income taxation under the then Section 116 of the Internal Revenue Code, which excludes from gross income any income derived from any public utility or the exercise of any essential governmental function and accruing to any state, or any political subdivision of a State. Subsequent to this settlement and to the 1949 amendment to the 1937 contract, power revenues continue to be applied to offset the deficits in water operation costs and are not considered by the IRS to be taxable income to the Association.

(The Commissioner of the IRS was apparently in error in refusing to allow any deduction for losses sustained in the water operations by the Association, as is now indicated by *Anaheim Union Water Co. v. Commissioner*, 321 F.2d 253 (9th Cir. 1963). The *Anaheim* case allowed non-profit water companies which furnished water and water services only to their shareholders to deduct against oil royalties, rentals and miscellaneous income the entire amount of the water costs including those in excess of charges to the shareholders for water services.)

B. Administration and Voting of the District

26. The statutes allow two forms of administration for agricultural improvement districts. Under the first, A.R.S. § 45-931 through § 45-942, a district is governed by a Board of Directors of between three and nine members. A.R.S. § 45-981 B. The District is governed under the alternate form, A.R.S. § 45-961 through 45-968, which allows for governance by a ten-member Board of Directors (the President is also an ex officio member) and a thirty-member Council. The District is divided into ten division, each of which elects one Director and three Council members. A President and Vice-President are elected at large. The boundaries of the electoral divisions of the Association and the District are virtually identical. The alternative form of administration is virtually identical to the governmental structure of the Association.

27. The statute allows for equal voting among qualifying landowners, or for acreage voting if so requested in the organization petition. The petition for organization of the Salt River Project Agricultural Improvement and Power District provided for elections on an acreage basis after the initial organization election. A.R.S. § 45-983. The election for formation of the District, however, was conducted on a one man, one vote basis among qualifying landowners. After the formation of the District, its elections have been conducted on an acreage basis.

28. To qualify to vote in District elections, electors must own taxable property within the District and possess the qualifications required of electors for state officers. Otherwise qualified electors of the District need not reside within the District to be entitled to vote their land in District elections. A.R.S. § 45-909.

29. In 1969 the Legislature amended the District's voting system to allow owners of fractional acreage to vote fractionally. A.R.S. § 45-983 (1975 Supp.). In the same year the Association amended its Articles of Incorporation to allow identical voting of fractional shares. Previously, a one-acre minimum landholding was required to vote in District and Association elections. Association Articles, Art. VII, §2. The effect of these changes was to give individual landowners a vote in Association and District elections in proportion to the lien on their land. As land use changes from agricultural to urban uses, therefore, the degree of urban participation allowed in District elections proportionately increases.

30. General elections of the Association and of the District are conducted simultaneously at the same locations by the same election officers on the first Tuesday of April of each even numbered calendar year. The Association elections are conducted pursuant to Article VII of its Articles, the District elections are conducted pursuant to A.R.S. § 45-981 through 45-992 (1956 and 1975 Supp.).

C. District-Association Relationship

31. To the extent that the Association and the District have identical boundaries, identical constituencies, and identical purposes, there has been since 1937 a close cooperation and consistent agreement over policy between the two in the management of the Salt River Project. The management staffs of the District and of the Association have been the same since shortly after the District took over operation of the entire Project in 1949.

32. The District was formed by the Officers of the Association, with the cooperation of the Legislature, for the immediate purpose of refinancing as its own obligations outstanding debts and of refinancing future debt in connection with the Salt River Project, all at the more advantageous interest rates available to municipal corporations. The mechanism for achieving this purpose was to form the District, assign to it the Association property rights and duties, and authorize it to perform contract obligations, which would serve the same purpose and ends which the Association has served and pursued.

33. The Association and its member landowners would not have transferred title to its property and control of the Salt River Project, including the power system, to a public body governed under a voting system without acreage voting and open to all qualified state electors solely on the basis of residence on District land.

34. The District was organized for the purpose of continuing the operations of the Association, the principal objective of which was to provide water for use within the geographic boundaries of the Association and District. Landowners were the intended beneficiaries *inter alia* because electric revenues were to be used to reduce the cost of development, storage and distribution of water to District lands. Subsequent to its formation in 1937, the District has continued to use electric revenues to defray the expense of providing water to District lands. The primary legislative purpose of the District is to provide water to District lands.

D. District Voting Information and Statistics

35. As of August 1975, 141,474.61 acres within the District were eligible to be voted in District elections. This is approximately 60% of the total number of acres within the District, excluding streets, alleys, canal rights-of-way, and

the Salt River riverbed. (Property held by corporations, municipalities, or other governmental bodies may not be voted, but property held by municipalities or other governmental bodies is not subject to the District's taxing power.)

36. The following table shows the number of people voting in District elections since 1970 and the total number of acres voted:

Election Year	Number of Voters	Number of Acres Voted
April 7, 1970	621	19,074.24
April 4, 1972	984	43,068.98
April 2, 1974	561	15,219.73

37. Between 1937 and 1974 the relative land uses in the District changed from 5.6% urban and 94.4% agricultural to 47% urban and 53% agricultural. (For the purposes of these statistics it is arbitrarily assumed that land parcels of one acre or less are urban and larger parcels are agricultural.) In 1974, 22.4% of all water delivered by the District and Association was delivered to municipalities; 15.% was put to other nonagricultural uses, and the balance was used in agriculture. Portions of eight Arizona municipalities are located within the geographic boundaries of the District — Phoenix, Mesa, Tempe, Scottsdale, Glendale, Chandler, Peoria, Tolleson and Gilbert. Substantial numbers of persons in the Phoenix metropolitan area reside on District lands.

E. Criteria for Inclusion of Lands Within District Boundaries

38. All lands included within the boundaries of the District were lands susceptible of irrigation by the same general system of irrigation works. Lands otherwise within the exterior boundaries of the District but excluded from the boundaries of the District were lands which would not be benefited generally or especially by the irrigation works of the District. The total acres as established by order of the Board of Supervisors on January 25, 1937 is 260,188 acres. At present, the total number of acres in the District, excepting canal rights-of-way, streets, alleys, and the Salt

River riverbed, is 236,482.66 acres. The total area excluded from the District but lying within the exterior boundaries of the District is 84,131 acres. Those areas excluded because they are not susceptible to irrigation by reason of high ground amount to a total of 39,494 acres. Approximately 35,021 acres are excluded from District boundaries because owners of the lands had not subscribed them into the Association, including 1,245 acres in the North Tempe area, 20,636 acres in the Salt River Indian Reservation, 7,720 acres in the South Chandler Water Conservation District, and 5,420 acres in the Peninsula-Horowitz and Maricopa Garden Farms area. Approximately 9,136 acres of land otherwise within the exterior boundaries of the District were excluded because they were townsite lands not eligible for reclamation project stored and developed water. (In addition to this, there are 480 acres in the City of Tempe entitled only to normal flow water, which are treated the same as townsite lands.)

F. Water Functions of the District

39. A comprehensive adjudication of water rights within the reservoir district was handed down by the District Court for the Third Judicial District of the Territory of Arizona on March 1, 1910, in the case of *Hurley v. Abbott* (the Kent Decree). Under that Decree, the normal flow of the river was found to have been appropriated to approximately 151,000 acres of land, and those vested water rights were confirmed. Rights to share in the additional water stored and developed by the reclamation project are shared equally among all land subscribed to Association membership. Lands not subscribed to Association membership have no right to share in reclamation water, and are limited to receipt of the normal flow water appropriated before the Kent Decree. The Kent Decree remains the governing determination of surface water rights in the Salt River reclamation reservoir district.

40. All surface water rights in the Salt River Project are appurtenant to the land under Arizona water law or proportionate to the land under federal reclamation statutes and the Articles of the Association. Rights to stored and developed water above the normal flow of the river are divided equally among all acres of Association (and District) land.

41. The water which the Association, as agent for the District, delivers to municipalities is, first the vested water rights of the municipality itself and of land owned by the municipality, and, second, the appropriated and stored and developed water appurtenant to or allocated to District or townsite lands within the corporate limits of the municipality and which the owners have not sought to have delivered directly by the Association. By contract the municipalities receive appropriated and stored and developed water which is appurtenant to or allocated to city land as agent for the owners of the land to which said waters are appurtenant or allocated; the city then pays on behalf of the landowners the assessments and water charges chargeable to the owners of the land. The cities then assume the responsibility to deliver the water to the lands entitled to receive it. Landowners may still receive from the Association (at the high point of the quarter section in which the land is located) any and all waters to which their land is entitled, although some landowners find it more convenient to accept delivery of their water through the cities. Since the municipalities take water from the Association either as appropriators or as agents for the landowners and in proportion to the water rights of the landowners, the assessments and charges made to municipalities for water delivered to them are the same as the assessments and charges made to other landowners for the delivery of their water. (Water trades are sometimes made for the convenience of the parties in which District water is used outside the District in exchange for which an equal amount of non-District water is brought into the District.)

Water is fungible. If the cities receive water from sources other than the District and mix it with District water, the water actually delivered by the cities to the landowners may not be able to be distinguished as to the sources from which it came.

42. The District provides water to eight cities in Maricopa County for municipal use. During 1974 the District provided water as follows:

City	Acre-feet from SRP	Percent from SRP
Chandler	707	14%
Gilbert	304	35%
Glendale	9,995	68%
Mesa	3,313	15%
Peoria	764	81%
Phoenix	122,974	61%
Scottsdale	2,471	40%
Tempe	19,814	92%
	160,342	59%

In 1975 these eight cities and towns paid a total of $620,699.85 to the Association in water assessments and delivery charges.

43. The landowning and acreage voting requirements of the Association and the District are intended to allocate to land and water interests the control of the affairs of the Association and the District, in proportion to the varying amounts of water rights and financial burdens borne by the various voters, because of the following considerations: (1) The acreage lien for general obligation bonding, A.R.S. §45-1047, (2) The acreage taxing power under A.R.S. §45-1011, *et seq.* (which has thus far not had to be used), (3) The Associations's acreage assessments for water, and, (4) The land proportionate basis of stored and developed water rights under federal reclamation law and the Articles of Incorporation of the Association and the somewhat land proportionate basis of appropriated water usage.

44. The District and the Association now service the water rights of 238,269.90 assessed acres of land. Normal flow water rights of some non-member lands, as established in the Kent Decree, are also served. The reclamation system has a 2,072,050 acre feet storage capacity in six reservoirs, and an 812,506 acre-feet groundwater pumping capacity. The water is distributed by 131 miles of major canals, 875 miles of laterals and 263 miles of drainage or waste ditches. The Association and the District administer the water rights established in the Kent Decree.

45. During the last ten years about 83% of the water system costs have been financed with power revenues. In 1974, revenues from water and irrigation activities were $2,613,184. The expenses, including depreciation, for irrigation and water operations exceeded revenues by about $14,000,000, and that deficit was met from power revenues. Water support has averaged approximately $10,000,000 annually since 1965. These amounts do not include expenditures for additions and improvements to the irrigation plant for repayment of long-term debt, which must also be met from power revenues. Any decrease in support from power revenues would have to be met from increased water delivery charges.

G. Power Function of the District

46. The District serves approximately 240,000 electric customers, of which approximately ninety percent (90%) are residential customers. Approximately 85% of the District's electric customers reside within the geographic boundaries of the District. A detailed summary of the District's electric operations is contained in Exhibit K which is a copy of the Official Statement for 1976 Series A Revenue Bonds. During 1974 revenues from the sale of electricity were $168,057,000 or ninety-eight percent (98%) of total revenues.

The District provides a reliable supply of essential electric energy and water in substantial portions of the Salt River Valley; thus, the District operation is important to the development of the Salt River Valley.

47. The District does not, and is not required to, serve electricity to all member lands; and it serves large areas outside of its boundaries. In 1955 the Arizona Corporation Commission and the Secretary of Interior approved an agreement between Arizona Public Service Company and the District establishing the service territories of each. Generally speaking, Arizona Public Service Company serves electricity to approximately 15% of the District area. The agreement resulted in (i) continuance of service by District to rural areas then served by it, even though such areas were later annexed by the cities in which APS was serving, (ii) the District withdrawing from retail service in certain areas and the assumption of service by APS, and (iii) APS agreeing to purchase from District at wholesale, the power requirements necessary to supply the retail sales in the areas where the District discontinued service.

48. By its Articles of Incorporation, the Association is obligated to compensate shareholders who pay substantially more for electricity used on Association land and purchased from public service corporations for domestic and ordinary farm purposes than shareholders who purchase electricity directly from the Association. By its contract of 1937, as amended, the District has assumed this contractual obligation of the Association to resident landowners. The District has on one occasion in the past discharged this contractual obligation of itself and of the Association to compensate District landowners for the difference in electricity costs between what they have paid public service corporations and what they would have paid the District for equivalent kinds of electric service.

H. Financing of the Salt River Project by the District and the Association

49. The District's long-term debt consists of General Obligation Bonds and Electric System Revenue Bonds. General Obligation Bonds outstanding are portions of eleven different issues sold between 1950 and 1972. All General Obligation Bonds were and are guaranteed by the Association.

Original amounts of outstanding issues	$358,970,000
Amounts paid at maturity	52,510,000
Bonds reacquired and cancelled	1,830,000
Bonds refunded	13,470,000
Total Outstanding	$290,980,000

These bonds are secured by a lien on all taxable real property within the District's boundary. The outstanding principal represents a potential tax totaling $1,221.25 per acre, not including the interest requirements. Outstanding General Obligation Bonds are not scheduled to be retired until 2003. Revenue Bonds outstanding totaling $600,000,000 were sold between 1973 and 1976. The first principal maturities come due in 1976. These bonds are secured by a pledge of revenues. Their lien on revenues is junior to the lien of the General Obligation Bonds.

50. Before the District began financing the Association, bonds were issued in six issues totaling $12,683,000. These bonds were sold at various dates between February 1, 1923 and November 1, 1938. The final maturity of Association bonds was in 1958. All these bonds were either paid at maturity out of Association revenues or refunded by District bonds. In addition, there were three issues of Agricultural Improvement bonds totaling $2,343,000. These were sold between May 1924 and February 1925. The Association guaranteed payment and in two cases pledged specific electric revenues to guarantee payment. Drainage District bonds totaling $125,000 were assumed as a general obligation of the Association on October 24, 1924.

51. In addition to the District bond issues summarized in paragraph 48, between 1938 and 1948 the District borrowed $24,371,000 in five bond issues which have been entirely repaid or refunded. Of that amount, $10,905,000 was borrowed to refund past indebtedness. All these debts were guaranteed by the Association. The last of these bonds were retired by July 1, 1975.

52. In addition to the original interest-free construction and acquisition funds which were repaid by 1955, since 1950 the United States has advanced to the Association $21,950,470 in interest-free loans for rehabilitation and betterment of project facilities, of which $10,881,063 has not yet been repaid to the government. Rehabilitation and betterment of the project works is being accomplished under the authority of the Act of October 7, 1949 (63 Stat. 724) as amended.

53. The current financial condition of the District as of December 31, 1974 is as reflected in the attached 1974 annual report (Exhibit L), pages 11 through 19. The current operations and activities of the District are as reflected in the attached 1975 annual statement, pages 20 and 21.

54. In summary, the plant investment per assessed acre of the District as of the end of 1974 was approximately $3,500.

55. Because of the past and continuing substantial investment for the development, storage and distribution of water to the Association and Distric lands, said lands have been assured of a reliable supply of water at a reasonable cost for the indefinite future. Because of the assurance of this indefinite supply of water, the assessed valuation of agricultural lands within the District and the Association is generally twice the assessed valuation of comparable agricultural lands outside the boundaries of the District and the Association.

56. Viewed as a percentage of gross power revenues, the amount of District power revenues utilized to meet water costs is approximately equivalent to the dividends paid to common stockholders in comparable electric utility companies.

I. District Tax Payments

57. Since 1963 the District has been authorized to make voluntary contributions in lieu of property taxes by A.R.S. § 45-2201 *et seq.* (1975 Supp.). These contributions are based on the value of property used by the District for the generation, transmission and distribution of electrical energy and upon the same assessment percentage applicable to utilities. In substance, the electrical facilities of the District are taxed the same as privately owned electric utility property.

58. Tax payments by the District in the last ten years include the following:

	Voluntary Payments in Lieu of Property Taxes	Ad Valorem Property (N.M., Nev. & Colo. Taxes)	Sales	Payroll	Total
1966	1,903,255		1,166,673	558,288	3,628,216
1967	2,675,989		1,246,953	624,552	4,547,494
1968	1,542,336	5,724	1,876,763	731,251	4,156,074
1969	4,506,785	76,068	2,442,366	849,600	7,874,819
1970	4,175,409	228,718	2,772,673	936,233	8,113,033
1971	5,490,727	371,813	3,175,105	1,075,409	10,113,054
1972	6,253,502	430,766	3,860,503	1,210,581	11,775,352
1973	6,644,077	411,427	2,703,628	1,753,523	13,512,655
1974	12,149,751	516,588	6,382,393	2,220,780	21,269,512
1975	16,621,310	(	—Not Available—		)
Total	61,963,141				

IV. MISCELLANEOUS

59. The secretary of the interior has comprehensive power under Federal reclamation statutes and the contracts between the United States and the Association and the District to supervise the District and the Association's

management of the Salt River Project, including the power operations. 43 U.S.C. § 498, 499, 500. The Secretary has never revised rates set by the District.

60. Although the District has an obligation to continue to use electric revenues to reduce the cost of water delivery, the precise amount of the subsidy is not fixed. District electric customers (particularly those who are not water users) might want to reduce the amount of the subsidy, whereas farmers, ranchers and others who economically benefit from less expensive water would undoubtedly oppose any substantial reduction in the subsidy level. Therefore, should the voting constituency of the District be changed as requested by plaintiffs, conflicts in the joint conduct and management of the water and electric operations would probably result between the District and Association which could interfere with the present harmony of operation. This would make it more difficult to borrow funds and would increase interest rates. An initial change in composition of the District Board of Directors would, because of concern in the financial community about instability of management, result in greater difficulty and higher cost of borrowing capital funds. It would be difficult to predict the long-range effects of such change.

61. The District has operated and continues to operate an "area development function" which responds to inquiries from firms considering locating offices in Phoenix. District area development people have worked with the following firms which have located in the Valley: Sperry Information Display Systems, Greyhound Corp., Capitol Foundry, Applied Materials, Digital Equipment, G. D. Searle, Co., Data Packaging, Motorola, Revlon, Marathon Steel, Honeywell, Rogers Corp., Talley Industries, Western Electric, Siemens, and General Instruments.

62. There are approximately 326 miles of transmission lines, 2,570 miles of overhead distribution lines and 1,124 miles of underground distribution lines located within the District's geographical boundaries. The District has 4 gen-

erating stations, 9 bulk power receiving stations, 64 residential distribution stations and 15 industrial distribution stations located within the District.

63. There have been occasional protests concerning the presence and location of power lines and towers.

64. The Salt River, which runs through the District's geographical area, is normally dry, but occasionally flows as a result of heavy runoffs from storms over which the District has no control. The occasional major quantities of water which have flowed in the Salt River in the last decade have been the result of sheet runoff into the river below Granite Reef Dam and releases from reservoirs operated by the District. The District has control of the reservoir outlets, but no control over the amount of water which flows from the Salt and Verde Rivers and Tonto Creek and various washes and creeks into the reservoirs or inflows into the canal system and Salt River below Granite Reef Dam. During the months of December 1965, and January, February and March of 1966, 551,504 acre-feet of water were released into the Salt River below Granite Reef. The water in the Salt River in 1965 destroyed or damaged all principal SRP transmission lines crossing the river, and it was reported that over 2,000 people temporarily left their homes. Service outages affected no more than 20% of the SRP service area, although approximately 30-40% of the then current electric load was involved to some degree. The remainder of the SRP electric service area was not affected in any significant way by the water.

During 1973, the District released 1,239,506 acre-feet of water from its reservoirs to accommodate heavy runoffs from watersheds. The releases of water in 1973 and 1965-66 were necessary because the reservoirs had reached a point beyond which they could not safely be filled further. The Bureau of Reclamation was kept informed of and concurred in the decisions to release water on both occasions.

On September 4, 1970 a rainfall of 100 year return frequency occurred in the watershed which is contributory to the Arizona Canal and Pima Road intersection in Scottsdale, Arizona. The Arizona Canal overflowed at that location, carrying sheet runoff, contributing to the flooding of homes located in subdivisions south of the canal, and it was reported that flood damage affected 1,000 homes. Owners of 220 flood-damaged homes brought suit against the Association and the District; total damages from the flood were agreed to be $720,345.45, although the Association and the District contest any liability on their part, and the District was dismissed from the suit by directed verdict.

The Arizona Canal and all other Project canals and ditches are intended and designed for irrigation; they are not flood control devices and were never intended as such. *Ramada Inns, Inc. v. Salt River Valley Water Users' Association,* 111 Ariz. 85, 88, 523 P.2d 496 (1974). Irrigation canals are designed and built entirely differently from flood control canals. Arizona statutes do not allow the District to engage in flood control functions. *Cf.* A.R.S. § 45-903 (1956). Federal Reclamation statutes do not allow the District to alter irrigation distribution facilities so as to accommodate natural runoff. 43 U.S.C.A. § 421 A (1975 Supp.) Nor may the District make major changes in Project facilities without the consent of the Bureau of Reclamation.

Any flood control benefits of the District's activities are only those naturally incident to the impoundment of water from natural water courses and the carrying capacity of the canals at any given time. The District may not under State or federal laws sacrifice its irrigation purposes to achieve flood control ends.

The Maricopa County Flood Control District and the Army Corps of Engineers are the state and federal agencies charged with flood control in the Salt River Valley.

65. The following documents and contracts attached hereto and designated Exhibits A through J, submitted by defendants, are true, accurate, authentic and complete copies of the documents which they purport to be; all facts recited in any such documents are true as of the dates of the documents in which they are recited; it is further stipulated that all legal rights, duties, liabilities, and relationships which the following documents purport to create or establish are true, valid, and binding according to the terms of said documents.

Exhibit A. Articles of Incorporation of the Salt River Valley Water Users' Association, as amended through April 4, 1972.

Exhibit B. Contract of June 25, 1904 between the Association and the United States.

Exhibit C. Contract of September 6, 1917 — Agreement providing for transfer of care, operation and maintenance of the Salt River Project to the Association.

Exhibit D. Contract of July 26, 1922 between the Association and the United States — Supplemental Agreement to 1904 and 1917 Agreements.

Exhibit E. Contract of April 25, 1928 between the Association and the United States — Amended and Supplemental to July 26, 1922 Agreement.

Exhibit F. Contract of November 26, 1935 between the Association and the United States — contract providing for construction of Bartlett Dam and repairs to project works.

Exhibit G. Contract of October 14, 1936 between the Association and the United States — supplemental to November 26, 1935 contract.

Exhibit H. Contract of March 22, 1937 as amended on February 28, 1944 and September 12, 1949 between the Association and the District approved by the United States transferring property of the Association to the District and delegating from the Association to the Dis-

trict the operation of the Salt River Project, with the Association retaining the irrigation functions of the project.

Exhibit I. Contract of June 30, 1950 between the Association and the United States amending the contract of September 6, 1917.

Exhibit J. Resolution of Maricopa County Board of Supervisors establishing Salt River Project Agricultural Improvement and Power District dated January 25, 1937.

66. The factual and statistical date contained in the following documents submitted by defendants are true as of the date of each document.

Exhibit K. Official statement for 1976 Series A Revenue Bonds, dated January 22, 1976.

Exhibit L. Salt River Project Annual Report 1974.

Exhibit M. Salt River Project Annual Report 1973.

Exhibit N. Salt River Project Annual Report 1972.

Exhibit O. Salt River Project Annual Report 1971.

Exhibit P. Salt River Project Annual Report 1970.

67. The following document, offered by plaintiffs, attached hereto and designated Exhibit Q, is a true, accurate, and complete copy of the document which it purports to be:

Exhibit Q. March 18, 1969 resolution of the Board of Directors of the District endorsing a change in District elections which would allow voting on a fractional acreage basis.

68. The factual and statistical data contained in the following documents, offered by plaintiffs, attached hereto and designated Exhibits R, through W, are true:

Exhibit R. Breakdown of voting in District elections for the officers of director, president and vice president for 1970, 1972 and 1974.

Exhibit S. Summary of water usage and water charges for the directors of the District during 1974.

Exhibit T. Biographical data of the District directors.

Exhibit U. Acreage and eligible votes in each of the ten (10) divisions of the District.

Exhibit V. Management's recommendation: Proposed Rate Increase, dated June 2, 1975.

Exhibit W. Formal presentations made at special Board meeting of the District, dated July 30, 1975.

69. Defendants offer the following maps, designated Exhibits X, Y and Z attached hereto, which are true and accurate representations of the areas they purport to represent:

Exhibit X. Salt River Project Agricultural Improvement and Power District, Eligible Voting Lands (1974).

Exhibit Y. Salt River Valley Water Users' Association, Eligible Voting Member Lands (1974).

Exhibit Z. Salt River Project Service Area (electricity) (1976).

FIRST SUPPLEMENT TO STIPULATED STATEMENT OF FACTS

70. Subject to the qualifications explained in this paragraph, the relative urban and agricultural land uses in the District in selected years were as follows:

Year	Agricultural	Urban
1937	229,460	13,500
1947	228,475	14,650
1957	199,960	39,441
1970	151,946	86,318
1971	146,005	92,259
1972	138,724	99,540
1973	132,774	105,490
1974	125,741	112,523
1975	124,452	113,812

These data were generated under a system devised by the District. The land use change has averaged 1% per year since 1937, although in the early 1970's the rate of change was higher due to circumstances of unusual economic growth. The rate of change in 1975 was 0.5%. The figures given do not purport to reflect actual land use. The figure for urban use include land actually put to urban use, land put to non-commercial agricultural use (crops or livestock used by owner rather than marketed), and vacant land held for speculation. Vacant land is classed according to the predominant surrounding use, except that it is sometimes assumed that vacant land in rural areas but in the urban growth pattern is held for speculation if owned by corporations, so such land is sometimes classed as urban.

71. Water assessments and delivery charges were recently increased to produce an additional $1,055,000 in water revenues. Mandatory acreage water assessments were increased 30%; delivery charges for additional normal flow and stored and developed water were increased 88%.

72. Plaintiff DWIGHT BRAHS purchases electricity from the District. Between March 1975 and February 1976, his average monthly bill was $27.26; his lowest bill was $18.39, and his highest bill was $34.83. Plaintiff ROLAND JAMES owns and operates a 16-unit apartment building; he purchases electricity from the District for each of the apartment units. Between March 1975 and February 1976, the average monthly bill for these 16 units was $292.29, the lowest bill was $205.91, and the highest bill was $410.95.

73. In April 1974, approximately 359,601 persons owned parcels of land within the District eligible to be voted if those persons were otherwise qualified electors of the State of Arizona. It cannot be determined how many of those 359,601 persons were qualified electors of the State of Arizona and therefore were eligible to vote their land in the District election.

74. During 1976, it is estimated that 25% of all water deliveries by the Association will be to cities. These deliveries are of water either owned by the cities or which landowners in the cities have allowed the cities to accept from the District on behalf of the landowners. Another 15% of water delivered by the Association will be used by its owners (the landowners) in non-agricultural but predominantly irrigation uses, including parks, playgrounds, schools and subdivision irrigation. The balance of the water delivered by the District will be used by its owners in agriculture.

75. As is indicated in paragraph 41 of the Stipulated Statement of Facts, eight Valley cities, pursuant to contract with the Association, accept delivery from the Association of some water which is appurtenant to or allocated to land within the cities. Those cities take delivery of the landowners' water as agents for the landowners. The cities accept delivery only of water which the individual landowners designate to be delivered to the cities as their agents. The cities then act as agents of the Association for the collection of taxes, assessments, and other charges on all Salt River Project lands within the cities, and they guarantee the payment of such charges to the Association. Although the practice may vary from city to city, presently the City of Phoenix pays the assessments and charges on behalf of the landowners from city water revenues, and the landowners then allow the city to use their water without receiving further compensation from the city for their water. The exact number of acres for which the landowners have designated each city to accept delivery of water is variable since such a designation, once made, may be changed. As of December 31, 1975, landowners were allowing the cities to accept delivery of water belonging to the following numbers of acres of District land:

Phoenix	45,751.95
Tempe	10,107.75
Peoria	513.85
Glendale	5,393.35
Gilbert	804.55

Scottsdale	1,657.10
Mesa	1,513.25
Chandler	785.25

76. Arizona Public Service Company and Tucson Gas & Electric Company are the first and third largest electric utilities in the State of Arizona. They are both investor-owned private corporations. Of the eight cities in the District, only Mesa serves electrical energy to its citizens.

77. Mr. and Mrs. WILLIAM P. SCHRADER currently own 0.22 acres of land in the District.

78. The cost to the District of holding an Association election alone is not significantly less than the cost of holding an Association election and a District election together.

79. Attached hereto and designated Exhibit AA is a true, accurate, authentic and complete copy of the contract under which the City of Phoenix delivers some water to the City as agent for some landowners. It is agreed that the contracts under which the Association delivers some water to Scottsdale, Tempe, Mesa, Peoria, Glendale, Gilbert and Chandler do not vary materially from the terms of Exhibit AA.

80. The share of agricultural water subsidy of the average residential power customer of the District in 1975 was approximately $9.47, and the residential water subsidy was approximately $4.81. Using figures most recently available (1974), the average subsidy per acre-foot of water was $14.03. The average cost for 5 acre-feet of water in 1974 was $22.50. The full cost of the same amount of water without any assistance would be $101.15.

81. Attached hereto and designated Exhibit BB is a map which depicts the land uses within the District and surrounding areas as of 1970. (This map was prepared by the Maricopa Association of Governments.)

SECOND SUPPLEMENT TO STIPULATED STATEMENT OF FACTS

82. Presently all eight cities which accept delivery of water on behalf of landowners pay the assessments and charges on behalf of the landowners from city water revenues.

83. The average subsidy per acre-foot of water for the following years was as follows:

1974	$14.03
1973	8.02
1972	15.32
1971	13.60
1970	12.65

84. The share of agricultural water subsidy and residential water subsidy of the average residential power customer, assuming those subsidies are met from no other power revenues, of the District in the following years was as follows:

Year	Agri. Assist.	Res. Assist.
1975	$ 8.89	$5.22
1974	12.06	7.39
1973	11.35	4.41
1972	17.31	8.92
1971	17.03	7.65
1970	19.12	7.81

In fact, the share of subsidy borne by residential power users is less because all power customers share some portion of the support.

85. On the average, about 5.3% of the agricultural land in the District lies fallow or idle. Various crops consume differing amounts of water per acre. For example, alfalfa hay consumes a seasonal use of 74.3 inches of water per acre; cotton consumes 41.2 inches; cereals generally consume less than 25.5 inches and lettuce 8.5 inches of water per acre. These crops, among others, are grown on District lands.

APPENDIX D

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

CIVIL ACTION FILE No. 75-498 PHX WEC

ROLAND W. JAMES, et al., Plaintiffs, vs. GERMAIN H. BALL, et al., Defendants.	JUDGMENT [Filed March 17, 1976]

This action came on for (hearing) before the Court, Honorable Walter E. Craig, United States District Judge, presiding, and the issues having been duly (heard) and a decision having been duly rendered.

It is Ordered and Adjudged that the plaintiffs take nothing and that the action is dismissed.

Dated at Phoenix, Arizona this 17th day of March, 1976.

W. J. FURSTENAU, Clerk

By Phyllis L. Martin
Deputy Clerk of Court

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

ROLAND W. JAMES, et al., Plantiffs, vs. GERMAIN H. BALL, et al., Defendants.	No. CIV 75-498 PHX WEC JUDGMENT [Filed March 17, 1976]

This cause came on to be heard on March 17, 1976 on Plaintiffs' and Defendants' Cross-Motions for Summary Judgment filed February 24, 1976. Pursuant to Rule 11(h), Rules of Practice of the United States District Court for the District of Arizona, the parties filed a stipulation on February 24, 1976 setting forth a Statement of the Stipulated Facts, later supplemented by similar stipulations filed on March 10, 1976 and March 16, 1976. Plaintiffs' Motion for Summary Judgment, filed February 24, 1976, also prays for certification of this action as a class action under Rule 23(b) (2), Federal Rules of Civil Procedure.

The Court has considered the several motions and the arguments of counsel, and the Stipulated Statement of Facts of the parties, together with the supplements thereto.

Accordingly, the Court finds that there is no dispute as to any material fact, that the statutes challenged by plaintiffs violate neither the equal protection nor the due process clauses of the Fourteenth Amendment to the United States Constitution, and that as a matter of law the defendants are entitled to summary judgment in their favor and that the Plaintiffs' Cross-Motion for Summary Judgment should be denied.

Therefore, IT IS ORDERED, ADJUDGED and DECREED that:

1. Plaintiffs' request for certification of this action as a class action under Rule 23(b) (2), Federal Rules of Civil Procedure, is denied.

2. Plaintiffs' Motion for Summary Judgment is denied.

3. Defendants' Motion for Summary Judgment is granted.

4. Judgment is to be entered in favor of defendants and against plaintiffs, with costs to be taxed against plaintiffs.

DATED this 17th day of March, 1976.

Walter E. Craig

Judge of the District Court

APPENDIX E

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

ROLAND W. JAMES, et al.,
Plaintiffs-Appellants,
v.
GERMAIN H. BALL, et al.,
Defendants-Appellees.

No. 76-1918
ORDER
[Filed February 6, 1980]

Before: CHOY and KENNEDY, Circuit Judges.

The court finds it unnecessary to amend or supplement its opinion by adding further instructions to the district court. The petition for rehearing is DENIED.

APPENDIX F

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

JAMES, ROLAND W., et al., Plaintiffs/Appellants, vs. BALL, GERMAIN H., et al. Defendants/Appellees.	No. 76-1918 NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES [Filed February 13, 1980]

Notice is hereby given that the Defendants/Appellees, GERMAIN H. BALL, ALEX M. CONOVALOFF, BILL ROUSSEAU, LEO C. SMITH, JOHN M. WILLIAMS, JR., THOMAS P. HURLEY, WILLIAM P. SCHRADER, JOHN S. HOOPES, W. LARKIN FITCH and THOMAS J. FINLEY, in their capacity as members of the Board of Directors, Salt River Project Agricultural Improvement and Power District, and KARL F. ABEL, in his capacity as President of the Salt River Project Agricultural Improvement and Power District, hereby appeal to the Supreme Court of the United States from that portion of the Opinion and Judgment of October 12, 1979, of the United States Court of Appeals for the Ninth Circuit reversing the judgment of March 18, 1976, of the United States District Court for the District of Arizona.

This appeal is taken under 28 U.S.C. § 1254 (2).

DATED: February 12, 1980.

JENNINGS, STROUSS & SALMON

By /s/ Neil Vincent Wake

Jon L. Kyl
Neil Vincent Wake
111 West Monroe
Phoenix, Arizona 85003
Attorneys for Defendants/
Appellees
(602) 262-5911

[certificate of service
omitted in printing]